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Reproductive Justice Begins with Contraceptive Access in the Philippines

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REPRODUCTIVE JUSTICE BEGINS WITH CONTRACEPTIVE ACCESS IN THE PHILIPPINES

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Abstract: Restrictive Philippine laws and a lack of public funding have limited Filipinos' access to modern contraception, resulting in high maternal mortality rates, high birth rates, unmet needs for family planning,[1] and health disparities between the lowest-income and wealthier women. Following the 1991 decentralization reforms, Local Government Units plan, administer, and fund most Philippine health services.[2] In the context of reproductive healthcare, decentralization has led to inequality, inadequate financing, successful opposition to contraception by the Catholic Church, and a lack of clear national standards. After a fourteen-year legislative struggle, on December 21, 2012, President Aquino signed "The Responsible Parenthood and Reproductive Health Act of 2012" ("RH Act"). This legislation confirmed Filipinos' right to contraception and reproductive healthcare and cited the 1987 Philippine Constitution as the source of those rights. On January 2, 2013, a married couple directly petitioned the Supreme Court of the Philippines, asking the Court to declare the RH Act unconstitutional. As a result, the Supreme Court enjoined the law and heard oral arguments in July and August 2013.

While the RH Act is likely constitutional, the Philippine Congress did not appropriate the dedicated funding necessary to implement the law's provisions. With inadequate financing, the RH Act will not increase access to contraception and the Philippines will fail to meet its constitutional obligations and international commitments. Unless the Philippines strengthens the implementing rules and appropriates funds, the lowest-income Filipino women will continue to experience reproductive oppression.

I. INTRODUCTION

Reproductive Justice acknowledges the rights of all people to have children, to not have children, and to parent the children they have with dignity, free from violence, oppression, and discrimination.[3] Filipino women in the lowest income quintile[4] have expressed frustration[5] that they

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1 The Philippine 2008 National Demographic and Health Survey defined unmet need as "the percentage of currently married, fecund women who either do not want any more children or want to wait before having their next birth, but are not using any method of family planning." *See* NAT'L STATISTICS OFFICE, 2008 PHILIPPINES NATIONAL DEMOGRAPHIC AND HEALTH SURVEY 85 (2008), *available at* http://www.measuredhs.com/pubs/pdf/FR224/FR224.pdf. Other surveys have defined unmet need based on the percent of women with knowledge of contraceptives examined in light of the percentage of women using contraceptives. For a discussion of the problems associated with the former definition, see Diana Greene Foster, *An unmet need . . . for a better measurement of contraceptive need*, ANSIRH BLOG (Apr. 6, 2011), http://blog.ansirh.org/2011/04/measuring-contraceptive-need/ (last visited Oct. 28, 2013).

2 For a chart of the decentralized system, see ALBERTO G. ROMUALDEZ JR. ET AL, THE PHILIPPINES HEALTH SYSTEM REVIEW 1, 20 (Health Sys. in Transitionk, 2011) *available at* http://www.wpro.who.int/philippines/areas/health_systems/financing/philippines_health_system_review.pdf.

do not have sufficient access to modern contraception,[6] the tool that would allow them to effectuate these rights. Further, their lack of access highlights structural barriers and power imbalances in granting contraceptive access mostly to higher-income women.[7] This inequality becomes starkly evident when government officials treat low-income women's fertility as a development marker or evidence of the success or failure of economic policies.[8] The reproductive justice framework "aims to transform power inequities and create long-term systemic change, and therefore relies on the leadership of communities most impacted by reproductive oppression."[9] Long-term systemic change can occur when the needs and wants articulated by the lowest-income Filipino women, as those most affected by

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[3] *See, e.g.*, *What is Reproductive Justice?*, SISTERSONG, http://www.sistersong.net/index.php?option=com_content&view=article&id=141&Itemid=81 (last visited Aug. 24, 2013) ("The reproductive justice framework—the right to have children, not have children, and to parent the children we have in safe and healthy environments—is based on the human right to make personal decisions about one's life, and the obligation of government and society to ensure that the conditions are suitable for implementing one's decisions is important for women of color."); *Motivation*, LAW STUDENTS FOR REPROD. JUSTICE, http://lsrj.org/motivation/ (last visited Aug. 24, 2013) ("Reproductive justice will exist when all people can exercise the rights and access the resources they need to thrive and to decide whether, when, and how to have and parent children with dignity, free from discrimination, coercion, or violence."); *What is Reproductive Justice?*, FORWARD TOGETHER (formerly ASIAN COMMUNITIES FOR REPRODUCTIVE JUSTICE), http://strongfamiliesmovement.org/what-is-reproductive-justice (last visited Aug. 24, 2013) ("Reproductive justice emerged as an intersectional theory highlighting the lived experience of reproductive oppression in communities of color. It represents a shift for women advocating for control of their bodies, from a narrower focus on legal access and individual choice (the focus of mainstream organizations) to a broader analysis of racial, economic, cultural, and structural constraints on our power.")

[4] The National Statistics Office in the Philippines divides individuals into five wealth quintiles based on the long-term standard of living of the household. *See* NAT'L STATISTICS OFFICE, *supra* note 1 at 20, 21.

[5] *See, e.g.*, Agence France-Presse, *Philippines Birth Control Law Is Too Late for a Mother of 22*, THE NATIONAL (Jan. 17, 2013), http://www.thenational.ae/news/world/asia-pacific/philippines-birth-control-law-is-too-late-for-a-mother-of-22 (reporting that the low-income mother of 22 children "said nobody taught her proper family planning methods and there was no easy access to free contraceptives in Baseco").

[6] NAT'L STATISTICS OFFICE & USAID, 2008 PHILIPPINES NATIONAL DEMOGRAPHIC AND HEALTH SURVEY: KEY FINDINGS 5 (2009), *available at* http://www.measuredhs.com/pubs/pdf/SR175/SR175.pdf.

[7] Twenty-six percent of Filipino women in the lowest wealth quintile use some modern method of contraception, while all women in all other wealth quintiles have higher rates of modern contraceptive usage. *See* NAT'L STATISTICS OFFICE, *supra* note 1 at 56, tbl.5.5.

[8] *See, e.g.*, Bill & Melinda Gates Foundation, *Family Planning: A Unique Opportunity for Change*, YOUTUBE (July 18, 2012), *available at* http://www.youtube.com/watch?v=FJ81C85Dyq4 (explaining that in July 2012, at the London Summit on Family Planning, representatives from the British Government, the Bill & Melinda Gates Foundation, and United Nations Population Fund discussed family planning and its effect on national development).

[9] FORWARD TOGETHER, *supra* note 3.

reproductive oppression, are met.[10] In the Philippines, the initial step towards reproductive justice is the augmentation of contraceptive access.

Reproductive justice relates to reproductive health and reproductive rights as a complementary, albeit separate, framework.[11] This comment utilizes the reproductive justice lens because contraceptive access concerns more than reproductive health service delivery, and Philippine law per se does not implicate reproductive rights because most modern contraception is legal in the Philippines. All three frameworks, however, focus on people and communities rather than economics, distinguishing them from development agendas. Reproductive health and justice advocates believe that governments are responsible for providing the tools necessary to realize individual rights rather than for architecting and implementing national birth rate targets.[12] While the language of reproductive health, rights, or justice may appear similar to that of development (which utilizes access to family planning), unlike development, none of these frameworks privilege the economic interests of a particular state.

Although Philippine law suggests that the government has the responsibility to ensure contraceptive access,[13] the lowest-income Filipino women have extremely limited access to contraceptives, which are integral to their ability to decide whether and when to have children, and how to parent the children they do have.[14] The 1987 Philippine Constitution sets forth robust, positive rights that support reproductive justice aims through detailed rights to health, equality, education, and sustainable human

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[10] While recognizing the importance of leadership by those most marginalized, this comment is a legal analysis set it in social context and written by an outsider. Reproductive justice proponents in the Philippines may have different responses to the legal framework discussed.

[11] For a discussion of the three frameworks, see ASIAN CMTYS. FOR REPROD. JUSTICE (now FORWARD TOGETHER), A NEW VISION 2 (2005), http://strongfamiliesmovement.org/assets/ docs/ACRJ-A-New-Vision.pdf (explaining that the Reproductive Health framework emphasizes the very necessary reproductive health services that women need; the Reproductive Rights framework is based on universal legal protections for women and sees these protections as rights; the Reproductive Justice framework stipulates that reproductive oppression is a result of the intersections of multiple oppressions and is inherently connected to the struggle for social justice and human rights).

[12] Clarissa C. David, Jenna Mae L. Atun & Antonio G. M. La Viña, *Framing in Legislation: The Case of Population Policy in the Philippines*, 31 POPULATION RES. POL'Y REV. 297, 311-312 (2012), *available at* http://www.springerlink.com/content/9kr2752118x61317/fulltext.pdf. *See also*, Diane A. Desierto, *Justiciability of Socio-Economic Rights: Comparative Powers, Roles, and Practices in the Philippines and South Africa*, 11 ASIAN-PAC. L. & POL'Y J. 114 (2010) (proposing a theory of justiciability for socioeconomic rights specified in Art. II, secs. 8-24 and Art. XIII – XV of the 1987 Philippine Constitution); Stephen P. Marks, *Jonathan Mann's Legacy to the 21st Century: The Human Rights Imperative for Public Health*, 29 J.L. MED. & ETHICS 131 (2001) (stating that Mann argued for a human rights based approach to public health).

[13] *See* CONST. (1987), art. II, sec. 12 (Phil.).

[14] UNITED NATIONS, CONTRACEPTIVE PREVALENCE RATE 54, *available at* http://www.un.org/esa/sustdev/natlinfo/indicators/methodology_sheets/health/contraceptive_prevalence.pdf.

development,[15] with the exception of abortion, which is prohibited.[16] National statutes—including the Magna Carta of Women,[17] the Local Government Code,[18] and the Labor Code,[19] among others—obligate the government to create the conditions necessary for reproductive justice.[20] Finally, as a party to numerous international treaties, the Philippine government has committed to working towards reproductive justice. Ratified international agreements—including the International Covenant on Economic, Social and Cultural Rights ("ICESCR");[21] the Covenant on Civil and Political Rights; the Convention on the Elimination of all Forms of Discrimination Against Women ("CEDAW");[22] and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[23]—detail reproductive justice rights and related government responsibilities.[24]

Historically, however, national and local Philippine reproductive health policies have demonstrated little concern for individuals.[25] Under former President Marcos, the Department of Health ("DOH") furthered its goal of population management through forced sterilization and intrauterine device ("IUD") implantation without Filipino women's consent or

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[15] *See* CONST. (1987), art. II, sec. 12, 14, 15 (Phil.).

[16] The Philippine Constitution prohibits abortion in all circumstances. *See* CONST. (1987), art. II, sec. 12 (Phil.) ("[The state] shall equally protect the life of the mother and the life of the unborn from conception."). While abortion is clearly part of reproductive healthcare, it is beyond the scope of this comment, which is focused solely on access to contraception. The Responsible Parenthood and Reproductive Health Act of 2012 cites this Constitutional passage and confirms that it does not legalize abortion. *See* An Act Providing for a National Policy on Responsible Parenthood and Reproductive Health [hereinafter RH Act], Rep. Act No. 10354, § 2 (Dec. 21, 2012). To learn more about the Philippine's abortion ban, see SUSHEELA SINGH ET. AL., UNINTENDED PREGNANCY AND INDUCED ABORTION IN THE PHILIPPINES: CAUSES AND EFFECTS 4 (Guttmacher Inst. ed. 2006), *available at* http://www.guttmacher.org/pubs/2006/08/08/PhilippinesUPIA.pdf.

[17] An Act Providing for the Magna Carta of Women, Rep. Act 9710, § 17 (Aug. 14, 2009) (Phil.), *available at* http://www.gov.ph/2009/08/14/republic-act-no-9710/.

[18] The Local Government Code, Rep. Act. No. 7106, § 17 (1991) (Phil.).

[19] Labor Code of the Philippines, Pres. Dec. 442 (1974) (Phil.).

[20] *See supra* notes 17-19.

[21] International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI) U.N. Doc. A/RES/2200A (Dec. 16, 1966), *available at* http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx [hereinafter ICESCR].

[22] Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. Doc. A/RES/34/180 (Dec. 19, 1979), *available at* http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en [hereinafter CEDAW].

[23] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46. U.N. Doc. A/RES/39/46 (Jun. 26, 1987), *available at* http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx.

[24] While these treaties do not specifically mention reproductive justice, they support its principles. *See, e.g.*, Programme of Action of the International Conference on Population and Development, Cairo, Egypt, ¶ 7.3, U.N. Doc. A/CONF.171/13/Rev.1 (Sept 5-13, 1994).

[25] DAVID WARWICK, BITTER PILLS: POPULATION POLICIES AND THEIR IMPLEMENTATION IN EIGHT DEVELOPING COUNTRIES 15-19 (1982).

knowledge.[26] In 2000, then-Manila Mayor José L. Atienza, Jr., a devout Catholic, issued Executive Order No. 003,[27] which physicians, hospitals, and non-governmental organizations in Manila interpreted as prohibiting city funding to provide and promote modern contraceptive methods in city hospitals and health centers.[28] These policies arguably contravened the rights articulated in the Philippine Constitution and Philippine laws, yet the national government has never penalized any Local Government Unit ("LGU") because of their non-provision of reproductive health care.[29]

In 2012, the Fifteenth Philippine Congress attempted to correct low-income Filipino women's lack of access through the passage of "The Responsible Parenthood and Reproductive Health Act of 2012" or Republic Act No. 10354 ("RH Act"), which specifically cited various Constitutional provisions as its foundational bases.[30] Senator Miriam Defensor Santiago, one of the RH Act's cosponsors, wrote after its passage:

> The bill merely wants to empower a Filipino woman from the poorest economic class to march to the nearest facility operated by the Department of Health or the local government unit, to demand information on a family planning product or supply of her choice.[31]

The RH Act privileges low-income women and stipulates open access to reproductive health services and supplies, including contraceptives.[32]

The legislative effort to pass the RH Act took fourteen years,[33] and opponents have not conceded defeat.[34] On January 2, 2013, twelve days

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[26] *Id*. at 18.

[27] DECLARING TOTAL SUPPORT TO THE RESPONSIBLE PARENTHOOD MOVEMENT IN THE CITY OF MANILA AND ENUNCIATING POLICY DECLARATIONS IN PURSUIT THEREOF, Exec. Ord. 003 (2000) (Phil.), *available at* http://www.likhaan.org/sites/default/files/pdf/2000_manila_policy_eo_003.pdf.

[28] CTR. FOR REPROD. RIGHTS, IMPOSING MISERY: THE IMPACT OF MANILA'S CONTRACEPTION BAN ON WOMEN AND FAMILIES (2007), *available at* http://reproductiverights.org/sites/crr.civicactions.net/files/documents/Imposing%20Misery%20Updated.pdf.

[29] Letter from Center for Reproductive Rights to the United Nations Committee against Torture, Office of the United Nations High Commissioner for Human Rights 1 (2012), *available at* http://reproductiverights.org/sites/crr.civicactions.net/files/documents/crr_Philippines_CAT_Shadow_Letter_2012.pdf.

[30] Miriam Defenso Santiago, *Leave No Woman Behind: Why We Fought for the Reproductive Health Bill*, CNN, (Dec. 31, 2012, 9:38 AM), *available at* http://www.cnn.com/2012/12/29/opinion/philippines-reproductive-health-bill-santiago/.

[31] *Id*.

[32] *See* RH Act, Rep. Act No. 10354, § 11 (Dec. 21, 2012) (stating "[t]owards this end, the DOH shall implement programs prioritizing full access of poor and marginalized women … to reproductive health care, services, products and programs.").

[33] Sushine Lichauco de Leon, *In Philippines, a 14-year Fight for Birth Control*, CNN (Dec. 21, 2012, 1:32 AM), http://www.cnn.com/2012/09/04/health/philippines-birth-control/index.html.

after President Aquino signed the RH Act, but before it was made official by publication in the National Gazette,[35] two Filipino lawyers submitted a petition directly to the Supreme Court of the Philippines asking that the Court invalidate the RH Act.[36] The petitioners argue that the RH Act violates multiple sections of the 1987 Philippine Constitution,[37] including Article II, § 12, which expressly recognizes the "sanctity of family life" and "the life of the unborn from conception."[38] Much of the ongoing debate surrounding the RH Act centers on abortion, which Philippine criminal law prohibits.[39] While the certiorari and prohibition petition will likely fail on both procedural and substantive grounds, the Supreme Court enjoined the Act in March 2013 and, in July 2013, extended the injunction indefinitely.[40]

The RH Act appears to be constitutional and the Supreme Court should deny the petitioners' request. However, the act does not go far enough to create the contraceptive access its sponsors describe.[41] While the RH Act purports to ensure that all Filipinos' family planning needs will be met, especially those of the lowest-income women, the legislation does not include dedicated appropriations and, therefore appropriations will be considered annually as part of the General Appropriations Act.[42] Additionally, fiscal tensions permeate the relationships between the national government, DOH, and LGUs. In order to fully adhere to explicit legal obligations implicated by contraceptive access, the Philippine Congress should appropriate dedicated funding for the RH Act and consider recentralizing aspects of the healthcare provision to the national government

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[34] CBCP News, *Archbishop Soc: Church is 'not social troublemakers' [sic]* (July 8, 2013), http://cbcponlineradio.com/?p=16214.

[35] Laws take effect 15 days after publication in the Official Gazette print version or in two newspapers of general circulation as mandated by the Administrative Code of 1987 and Executive Order No. 200, s. 1987. *See* Civil Code, art. 2, Rep. Act 386, as amended (Phil.)

[36] Babe Romualdez, *Catholic Church on the Offensive*, THE PHILIPPINE STAR (Jan. 6, 2013, 12:00 AM), http://www.philstar.com/opinion/2013/01/06/893730/catholic-church-offensive.

[37] *Id*.

[38] CONST. (1987), art. II, sec. 12 (Phil.).

[39] CTR. FOR REPROD. RIGHTS, FACTS ON ABORTION IN THE PHILIPPINES: CRIMINALIZATION AND A GENERAL BAN ON ABORTION (2009), *available at* http://reproductiverights.org/sites/crr.civicactions.net/files/documents/pub_fac_philippines.pdf.

[40] The Supreme Court does not have original jurisdiction over this controversy and petitioners cannot identify a specific harm experienced or rationale for standing. *See* OFFICE OF THE SOLICITOR GEN., *Consolidated Comment*, (May 9, 2013), *available at* http://sc.judiciary.gov.ph/microsite/rhlaw/osg-comment.php.

[41] *See* Santiago, *supra* note 30.

[42] In the Philippines, the budget process begins with a draft plan prepared by the Development Budget Coordinating Committee (DBCC). The president then submits a budget proposal to Congress, where the House Appropriation Committee and the Senate Finance Committee consider it separately and propose amendments. Finally, a Bicameral Conference Committee finalizes the annual General Appropriations Act. *See The Budgeting Process*, DEPT. OF BUDGET AND MGMT. (Mar. 2012) http://www.dbm.gov.ph/wp-content/uploads/2012/03/PGB-B2.pdf.

in order to improve coordination with LGUs and implement clear national standards.

To tease apart the interconnected issues of healthcare, religion, and development, Part II of this comment examines the RH Act and the Supreme Court petition requesting that it be invalidated. Additionally, this part analyzes the benefits of contraceptive access to the lowest-income Filipino women who have experienced coercive policies; the history of those policies; and the legal frameworks that support the RH Act, including the Philippine Constitution, national statutes, and international agreements. Part III demonstrates why low-income women need access to contraception, how the petition to invalidate the RH Act is flawed procedurally and substantively, and the limitations of the RH Act. Part IV describes why the Philippines should provide contraceptive access to the lowest-income women, the reasons that the Supreme Court should confirm the constitutionality of the RH Act, and how the RH Act could be strengthened to better provide low-income women with contraceptive access. Finally, this comment concludes that the RH Act is constitutional and should be strengthened in order for the lowest-income Filipino women to achieve contraceptive access and begin to dismantle the systemic barriers that denied them comprehensive reproductive healthcare.

II. REPRODUCTIVE OPPRESSION IN THE PHILIPPINES HAS HISTORICAL AND CULTURAL ROOTS DESPITE LEGAL SUPPORT FOR REPRODUCTIVE JUSTICE

Throughout the twentieth century and into the twenty-first century, specific reproductive health policy in the Philippines has varied depending on the executive. In 1898, through General Order No. 15, the United States[43] created a Board of Health for the city of Manila, which became the Department of Health.[44] Following Philippine independence in 1958, the government formed eight regional health offices and decentralized health services to regional, provincial, and municipal governments.[45] During President Ferdinand Marcos's tenure, Congress officially decentralized

[43] Spain ceded the Philippines to the United States in 1898 through the Treaty of Paris. DANIEL B. SCHIRMER & STEPHEN ROSSKAMM SHALOM, THE PHILIPPINES READER: A HISTORY OF COLONIALISM, NEOCOLONIALISM, DICTATORSHIP, AND RESISTANCE 5-18, 57 (1987). Soon after, the Philippine-American War broke out and lasted from 1899 to 1902. *Id.* In 1933, Congress approved the Hare-Hawes-Cutting Independence Bill over President Herbert Hoover's veto, which provided for a ten-year transition period to independence. *See id.*

[44] *Milestones: DOH Through the Years*, DEP'T OF HEALTH, http://www.doh.gov.ph/node/milestones.html (last visited Nov. 10, 2012).

[45] *See* WARWICK, *supra* note 25, at 87.

health services, though the national government still unofficially controlled them with explicit emphasis placed on population management strategies.[46] After the People's Power Revolution in 1986,[47] the new government promulgated the Local Government Code of 1991,[48] which decentralized health services to LGUs and made them responsible for planning, funding, and administering health services.[49]

While Philippine birth rates have fallen since the first half of the twentieth century[50] and modern contraceptives are currently legal,[51] analyzing birth rate data in the aggregate obscures the fact that birth rates for the lowest-income women are more than double those of women in the highest wealth quintile.[52] Further, without resources to purchase contraception, legalization does not increase access for low-income women. In such cases, reproductive justice advocates argue for public reproductive healthcare, including contraception, in order to overcome powerful social inequalities that further reproductive oppression.[53] As Nancy Ehrenreich explains, "in order for poor women to live the reproductive lives they want, and need, it may be necessary for states to fund certain services they cannot afford themselves."[54] While Ehrenreich's focus is on low-income women in the United States, the lowest-income women in the Philippines would similarly benefit from public financing of contraception.

This section will examine A) the RH Act's provisions and the certiorari and prohibition petition to the Supreme Court; B) the benefits of contraceptive access; C) the history of Philippine reproductive healthcare, including the decentralization of health services, population management, and the Catholic Church's opposition to contraception; and D) the sources of law that support contraceptive access, including the Philippine Constitution, Philippine law, and ratified international treaties.

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[46] *Id*.

[47] Kate McGeown, *People Power at 25: Long road to Philippine democracy*, BBC, http://www.bbc.co.uk/news/world-asia-pacific-12567320 (last visited Feb. 24, 2011).

[48] *See* The Local Government Code, Rep. Act. No. 7106, § 17 (1991) (Phil.).

[49] *Id*. at § 17(b).

[50] Marilou P. Costello & John B. Casterline, *Fertility Decline in the Philippines: Current Status, Future Prospects*, *in* U.N. DEP'T OF INT'L ECON. & SOC. AFFAIRS, POPULATION DIV., POPULATION BULLETIN OF THE UNITED NATIONS: COMPLETING THE FERTILITY TRANSITION 479 (2009), *available at* http://www.un.org/esa/population/publications/completingfertility/bulletin-english.pdf.

[51] Modern contraception—with the exception of emergency contraception—is legal. *See* Kenneth R. Weiss, *Philippines Birth Control: Filipinos Want It, Priests Don't*, L.A. TIMES (July 22, 2012), *available at* http://www.latimes.com/news/nationworld/world/population/la-fg-population-matters5-20120729-html,0,5897961.htmlstory.

[52] NAT'L STATISTICS OFFICE, *supra* note 1, at 41, tbl.4.2.

[53] *See, e.g.*, THE REPRODUCTIVE RIGHTS READER 3, (Nancy Ehrenreich, ed., 5th ed. 2008).

[54] *Id*.

A. A Fourteen-Year Legislative and Cultural Controversy Resulted in Mandated Contraceptive Access, but Opponents Continue to Deny the RH Act's Constitutionality

For the past fourteen years, the Philippine government has considered numerous versions of reproductive health legislation, but failed to approve any of them, due in large part to religious opposition.[55] Finally, on December 21, 2012, President Aquino signed into law Republic Act 10354, known as "The Responsible Parenthood and Reproductive Health Act of 2012." The RH Act premises its legitimacy on Constitutional provisions concerning women and health, specifically reproductive health, gender equity, equality, and the right to education.[56] In addition to referencing constitutional rights, the text notes the Philippines' "obligations under various international human rights instruments."[57]

The RH Act confirms Filipinos' right to modern contraception and "guarantees universal access" to reproductive health care, services, methods, devices, and supplies.[58] Additionally, the RH Act states that the provision of contraceptives "is essential in the promotion of the people's right to health" and is a "component of basic health care."[59] The RH Act defines reproductive health rights as belonging to individuals and couples, and as including "whether or not to have children; the number, spacing and timing of their children [and] other decisions concerning reproduction."[60] Furthermore, inherent in these rights is the ability to access them "free of discrimination, coercion, and violence."[61]

Supporters of universal reproductive healthcare have touted the RH Act's benefits to the lowest-income women.[62] Low-income women and girls receive preferential access to free health care, services, and supplies.[63] The RH Act tasks DOH and the National Household Targeting System for Poverty Reduction with identifying the "poor and marginalized" women

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[55] Aurea Calica, *Noy Calls for Unity After RH Bill Approval*, THE PHILIPPINE STAR (Dec. 19, 2012), http://www.philstar.com/headlines/2012/12/19/887653/noy-calls-unity-after-rh-bill-approval.

[56] RH Act, Rep. Act No. 10354, § 2(d) (Dec. 21, 2012).

[57] *Id.* at § 3(h).

[58] *Id.* at § 2(d).

[59] *Id.* at § 3(d).

[60] *Id.* at § 4(s).

[61] *Id.*

[62] *See, e.g.*, Mary Racelis, *Seeking Justice from the Justices: RH Again*, INQUIRER, (July 28th, 2013, 9:55 PM), *available at* http://opinion.inquirer.net/57645/seeking-justice-from-the-justices-rh-again (arguing that poor women in both rural areas and urban slums are the most affected by Catholic prohibitions on contraception). Dr. Racelis is the former director of the Institute of Philippine Culture and a Senior Professorial Lecturer at the Ateneo de Manila University. *Id.*

[63] *See* RH Act, Rep. Act No. 10354, § 2(d) (Dec. 21, 2012).

who will receive priority access.[64] As written, the RH Act obligates the Philippine government to both provide contraceptive access and prioritize the women who need it most.

While much of the controversy[65] surrounding the RH Act centers on abortion, the text excludes access to abortion[66] or abortifacients.[67] The RH Act prohibits access to any drug or product that prevents the "implantation of a fertilized ovum as determined by the FDA."[68] The text reaffirms the country's prohibition on abortion and incorrectly defines emergency contraception as an abortifacient.[69] The RH Act authorizes universal access to reproductive health care, but delineates which services and products are legal.

Petitioners James Imbong and Lovely-Ann Imbong, on behalf of themselves and their children, filed a petition for certiorari and prohibition directly to the Supreme Court of the Philippines, requesting that the Court invalidate the RH Act as unconstitutional.[70] The Supreme Court accepted the petition and, through a status quo ante order, enjoined the law for a period of 120 days on March 19, 2013,[71] three days after the implementing

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[64] *See id.* at § 11.

[65] Additional controversial aspects of the RH Act concern minors' access to contraception and the criminal aspects of the law, both of which are beyond the scope of this comment. *See id.* at § 7.

[66] The United Nations now characterizes the lack of abortion access as torture. *See* UN Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013) (by Juan E. Méndez) ("The Special Rapporteur seeks to complement these efforts by identifying the reproductive rights practices in health-care settings that he believes amount to torture or ill-treatment. International and regional human rights bodies have begun to recognize that abuse and mistreatment of women seeking reproductive health services can cause tremendous and lasting physical and emotional suffering, inflicted on the basis of gender. Examples of such violations include . . . denial of legally available health services such as abortion and post-abortion care.")

[67] Contraceptives prevent pregnancy whereas an abortifacient terminates it. *See, e.g.*, Rachel Benson Gold, *The Implications of Defining When a Woman Is Pregnant*, GUTTMACHER INST. (May 2005), http://www.guttmacher.org/pubs/tgr/08/2/gr080207.html (last visited Sept. 2, 2013) (explaining the difference between contraceptives and abortifacients).

[68] RH Act, Rep. Act No. 10354, § 2(d) (Dec. 21, 2012).

[69] "The assertion that emergency contraception is or can act as an abortifacient derives from a definition of pregnancy embraced by the Catholic Church and many anti-abortion advocates but flatly rejected by the medical profession. Under this definition, pregnancy begins with the "moment of fertilization"—the union of an egg and sperm. Major medical organizations, on the other hand, as well as U.S. government policy, consider a pregnancy to have begun only when the entire process of conception is complete, which is to say after the fertilized egg has implanted in the lining of the uterus." Sneha Barot, *Past Due: Emergency Contraception In U.S. Reproductive Health Programs Overseas*, 13 GUTTMACHER POL'Y REV. 8, 8-9 (2010), *available at* http://www.guttmacher.org/pubs/gpr/13/2/gpr130208.pdf.

[70] Imbong v. Ochoa, G.R. No. 204819, 4 (S.C. Jan. 2, 2013) (Phil.), *available at* http://sc.judiciary.gov.ph/microsite/rhlaw/.

[71] Supreme Court of the Philippines, En Banc Notice, G.R. No. 204819 (Mar. 19, 2013), *available at* http://sc.judiciary.gov.ph/jurisprudence/resolutions/2013/03/204819.pdf.

rules took effect,[72] and then enjoined the law indefinitely on July 16, 2013.[73] From July 9, 2013 to August 20, 2013, the Court held a series of five oral argument sessions.[74] The Supreme Court has not indicated when it will issue a decision.

Through the RH Act, the Philippine Congress affirmed its responsibility to provide contraceptive access to the lowest-income people. However, in order to analyze the Act's effectiveness, it is necessary to scrutinize the conditions necessitating government intervention as well as the Philippine government's role in perpetuating reproductive inequality and oppression.

B. Access to Contraception Benefits Women

Increased contraception and family planning access has undeniable benefits, both for women and children.[75] Increased contraception use in the developing world has reduced maternal mortality by reducing unintended pregnancies and has improved perinatal outcomes and child survival.[76] The World Health Organization ("WHO") recommends that women wait at least twenty-four months between live births and subsequent pregnancies in order to "reduce the risk of adverse maternal, perinatal, and infant outcomes."[77] Birth spacing, often achieved through contraception, helps to avoid both maternal and neonatal mortality as well as the risk of prematurity, fetal death, low birth weight, and small size for gestational age.[78] Further, WHO cites access to modern contraception as the factor that can positively affect the rates of maternal deaths, HIV/AIDS transmission, and unsafe

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[72] Implementing Rules and Regulations of the Responsible Parenthood and Reproductive Health Act of 2012 O.G. (Mar. 18, 2013) (Phil.), *available at* http://www.gov.ph/2013/03/18/implementing-rules-and-regulations-of-republic-act-no-10354/ [hereinafter RH Act Implementing Rules].

[73] Rhaydz B. Barcia and Jomar Canlas, *RH Law Stopped Indefinitely*, MANILA TIMES (July 16, 2013 10:46PM), *available at* http://www.manilatimes.net/rh-law-stopped-indefinitely/19798/.

[74] SUPREME COURT OF THE PHILIPPINES, *Oral Arguments Audio Records, RH Law, Part 1, July 9, 2013*, *available at* http://sc.judiciary.gov.ph/microsite/rhlaw/.

[75] Joerg Dreweke, *Review of Scientific Literature Documents Significant Social and Economic Benefits of Contraception*, GUTTMACHER INST. (March 21, 2013), *available at* http://www.guttmacher.org/media/nr/2013/03/21/.

[76] John Cleland et al., *Contraception and Health*, 380, THE LANCET 149 (2012).

[77] WORLD HEALTH ORG., REPORT OF A WHO TECHNICAL CONSULTATION ON BIRTH SPACING, GENEVA, SWITZERLAND 2 (June 13-15, 2005), *available at* http://whqlibdoc.who.int/hq/2007/WHO_RHR_07.1_eng.pdf.

[78] *Id.* at 9-10.

abortions.[79] These benefits require that women have access to contraception and the information necessary to use them effectively and safely.[80]

Filipino women's access to contraception varies according to their socioeconomic status. Scholar Ruth Macklin posits that throughout the world, a woman's status determines whether she has access to contraception, and how governmental policies and providers' actions affect her use of contraceptives.[81] While birth control is available in the Philippines, the cost is prohibitive for the lowest-income women.[82] By explicitly prohibiting government funding or inadequately funding contraception, the national and local governments have effectively restricted access to contraceptives.[83]

Lack of access to contraception has worsened Filipino women's health. The estimated Philippine birth rate in 2013 is 24.62 births per 1,000,[84] which WHO characterizes as one of the highest in Asia.[85] The maternal mortality rate increased to 2.21 women's deaths per 1,000 live births in 2011 from 1.62 deaths in 2006.[86] In 2012, 51% of married women between the ages of 15 and 49 used some form of birth control,[87] while only 34% used a modern method.[88] Across the Philippines, 22% of married women have an unmet need for family planning.[89] Unmet family needs are those experienced by women in sexual relationships who do not want to

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[79] WORLD HEATH ORG., COUNTRY COOPERATION STRATEGY FOR THE PHILIPPINES 2011-2016 12 (2010), *available at* http://www.wpro.who.int/countries/phl/ccs_phl_en.pdf.

[80] As explained in this comment, access includes knowledge and information. *See* BETSY HARTMANN, REPRODUCTIVE RIGHTS AND WRONGS: THE GLOBAL POLITICS OF POPULATION CONTROL 216-18 (2d ed. 1995) (discussing how the United States Agency for International Development ("USAID") and the Indian government failed to tell women about the health risks associated with the Dalkon Shield and Lippes Loop IUDs).

[81] RUTH MACKLIN, ETHICS IN GLOBAL HEALTH: RESEARCH, POLICY, AND PRACTICE 43 (2012).

[82] *See* Weiss, *supra* note 51.

[83] Letter from Center for Reproductive Rights to the United Nations Committee against Torture, Office of the United Nations High Commissioner for Human Rights 12-13 (2012), *available at* http://reproductiverights.org/sites/crr.civicactions.net/files/documents/crr_Philippines_CAT_Shadow_Letter_2012.pdf.

[84] CIA, *Country Comparison: Birth Rate*, THE WORLD FACTBOOK, https://www.cia.gov/library/publications/the-world-factbook/fields/2054.html (last visited Sept. 21, 2013).

[85] WORLD HEALTH ORG., *supra* note 79 at 5.

[86] *See* USAID PHILIPPINES, *Maternal and Child Health Integrated Program ("MCIP") Philippines*, http://blog.usaid.gov/tag/maternal-and-child-health-integrated-program/ (last visited Sept. 21, 2013). Relatedly, the Philippines have agreed to meet the United Nations Millennium Development Goal of only 0.52 maternal deaths per 1,000 live births by 2015, which appears impossible. *See MDG 5: Will Philippine Women Continue to Die During Childbirth?*, UNITED NATIONS POPULATION FUND PHILIPPINES, http://www.unfpa.org.ph/index.php/mdg-5 (last visited Sept. 20, 2013).

[87] *See* NAT'L STATISTICS OFFICE, *supra* note 1, at 51. Modern methods of birth control available in the Philippines include birth control pills, condoms, intrauterine devices, and sterilization. Traditional birth control methods include calendar/rhythm/periodic abstinence and withdrawal.

[88] *Id*. at 54.

[89] NAT'L STATISTICS OFFICE & USAID., *supra* note 6, at 5.

have a child, but are not using contraception.[90] Research has demonstrated that low-income women are much more likely than higher-income women to experience an unmet family planning need.[91]

Low-income Filipino women have expressed their discontent with their current contraception access.[92] They recognize a relationship between their unmet contraceptive needs and the health disparities separating women in different wealth quintiles.[93] Twice as many low-income women as wealthier women cited their lack of knowledge about contraceptives or access to them as the reason for not using contraception.[94] Wealth barriers to contraception result in the lowest-income women having more than twice as many children than wealthier women: in 2008, the poorest women had an average of 5.2 births, whereas the wealthiest women averaged 1.9 births.[95] Additionally, women in urban areas used contraception more widely than rural women, a reflection of the wider availability of contraceptives in urban areas.[96] Furthermore, 74.5% of women in the lowest income quintile did not discuss family planning with a medical professional during the twelve months preceding the survey.[97] A woman's wealth quintile determines whether she can access modern contraception and how much she knows about it.

Economic forces further complicate contraceptive access. Out of all available modern methods, birth control pills are the most attractive to Filipino women; the majority of women who currently use modern methods use birth control pills[98] and more than half of women who plan to start using modern methods prefer birth control pills.[99] As of 2008, the majority of Filipino women using modern contraceptives obtained them from the private

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[90] *Id. See also* Nancy Felipe Russo & Julia R. Steinberg, *Contraception and Abortion: Critical Tools for Achieving Reproductive Justice*, *in* REPRODUCTIVE JUSTICE: A GLOBAL CONCERN 158 (Joan C. Chrisler ed., 2012) (explaining that the concept of unmet needs represents an intersection point between population management interests and those of advocates for women's reproductive rights and health).

[91] Russo & Steinberg, *supra* note 90 at 159.

[92] NAT'L STATISTICS OFFICE & USAID, *supra* note 6, at 5.

[93] *See, e.g.*, ENGENDERIGHTS, INC., http://www.escr-net.org/docs/i/838839 (last visited Nov. 11, 2013); REPROCEN, http://www.reprocen.com/program-thrusts-activities.html (last visited Nov. 11, 2013); REPROD. HEALTH ADVOCACY NETWORK, http://reproductivehealthadvocacynetwork.blogspot.com/ (last visited Nov. 11, 2013).

[94] GILDA SEDGH ET AL., WOMEN WITH AN UNMET NEED FOR CONTRACEPTION IN DEVELOPING COUNTRIES AND THEIR REASONS FOR NOT USING A METHOD 7 (Guttmacher Inst. 2007), *available at* http://www.guttmacher.org/pubs/2007/07/09/or37.pdf.

[95] NAT'L STATISTICS OFFICE & USAID, *supra* note 6, at 3.

[96] NAT'L STATISTICS OFFICE, *supra* note 1, at 56.

[97] *Id.*at 69.

[98] *Id.* at 56.

[99] *Id.* at 66.

sector.[100] Meanwhile, the public sector's use of modern contraception declined from 67% in 2003 to 46% in 2008.[101] While less public funding was available in 2008 as opposed to 2003,[102] the private sector's pricing excludes access for the lowest-income women. The private sector charges more than the public sector[103] yet provides the majority of birth control pills (74.3%).[104] As public sector funding declined from 2003 to 2008, the lowest-income women could not afford to purchase a preferred method of contraception on the private market.

The RH Act addresses the reproductive health needs of the lowest-income Filipinos. Recognizing the special needs of these women whose access is limited by cost, the RH Act stipulates "preferential access to those [individuals] identified through the National Household Targeting System for Poverty Reduction ("NHTS-PR") and other governmental measures of identifying marginalization."[105] Additionally, the RH Act will add reproductive health information to anti-poverty programs[106] and will encourage physicians to provide forty-eight hours of pro bono services annually to indigent women.[107] If implemented, the RH Act could positively affect the lowest-income women's unmet contraceptive needs and afford those women the ability to decide when and whether to have a child.

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[100] *Id.* at 61.

[101] Press Release, Fernanda Abella, Cutbacks in Publicly Funded Contraceptive Services Reduce Filipino Women's Ability to Practice Contraception, Guttmacher Inst. (May 28, 2010), *available at* http://www.guttmacher.org/media/nr/2010/05/28/.

[102] The United States' Agency for International Development ("USAID") "had a pervasive influence on the development of population policy in the Philippines and on the organizational structure for executing that policy." *See* WARWICK, *supra* note 25, at 85. Between 1991 and 2002, USAID provided USD 40 million worth of contraceptives or eighty percent of the country's total supply. *Id.* In 2002, USAID announced that it would stop supplying contraceptives to the Philippines. *See United States To Cut Off Supply of Free Contraceptives to Philippines By 2004*, KAISER HEALTH NEWS (Sept. 26, 2002), http://www.kaiserhealthnews.org/Daily-Reports/2002/September/26/dr00013671.aspx (last visited Oct. 25, 2013). In 2008, the National Demographic and Health Survey noted that "the level of unmet need has increased by more than one-third since the 2003 [survey]. The increase in unmet need appears to reflect the impact of the withdrawal of the USAID commodities supply and/or an increase in demand for family planning." *See* NAT'L STATISTICS OFFICE, *supra* note 1, at 85.

[103] NAT'L STATISTICS OFFICE, *supra* note 1, at 62.

[104] The public sector continues to provide the majority of permanent methods, e.g., female sterilization. *See id.* at 61.

[105] RH Act, Rep. Act No. 10354, § 2(d) (Dec. 21, 2012).

[106] *Id.* at § 11

[107] *Id.* at § 17.

C. The Lowest-Income Women in the Philippines Have Experienced Consistent Reproductive Oppression

Philippine health services generally and reproductive health care specifically suffer from the historical intersection of colonialism, religion, economics, and international priorities.[108] Before the Republic of the Philippines gained independence in 1946, the United States centralized the health system.[109] While debate over government decentralization in the 1950s and 1960s resulted in the Decentralization Act of 1967,[110] President Ferdinand Marcos[111] simultaneously pursued a strategy of centralization by which he controlled the nation's finances and decision-making.[112] Following the People's Power Revolution in 1986, the Philippines experienced domestic and international pressure to decentralize. This culminated in the Local Government Code of 1991, which transitioned health policy from the purview of the national DOH to the provinces, cities, municipalities, and barangays (the smallest administrative division in the Philipines).[113] Currently, LGUs are responsible for health planning, funding, and implementation, which has resulted in health standards and outcomes that vary by region, municipality, and neighborhood.[114] This section will examine several origins of reproductive oppression, including population management, the 1991 decentralization of essential services, and religion.

1. Population Management's Focus on Fertility as an Economic Strategy Hinders Reproductive Justice

The RH Act takes pains to distinguish the provision of reproductive health care from population management strategies.[115] Population

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[108] *See, e.g.*, Maria Dulce Ferrer Natividad, Reproductive Politics, Religion, and State Governance in the Philippines (2012) (unpublished Ph.D. dissertation, Columbia University), *available at* http://academiccommons.columbia.edu/catalog/ac:146600 (arguing that class, gender, and religion work in tension with one another, while the historical entanglement between religion and the state configures practices of governance).

[109] Irene V. Langran, *Decentralization, Democratization, and Health: The Philippine Experiment*, 46 J. OF ASIAN AND AFR, STUD. 361, 362 (2011), *available at* http://jas.sagepub.com/content/46/4/361.full.pdf.

[110] The Decentralization Act of 1967 resulted in a larger provincial share of national revenue and increased local budgetary control, including mayoral discretion. *See id*. at 363.

[111] Marcos ruled the Philippines from 1965 to 1986. *See The Philippines: The Marcos Years*, GEORGE WASHINGTON UNIV., http://www2.gwu.edu/~nsarchiv/nsa/publications/philippines/philippines.html (last visited Sept. 12, 2013).

[112] Langran, *supra* note 109, at 363.

[113] Local Government Units include 3 levels: provinces, cities and municipalities, and barangays. *See id*. at 364.

[114] *Id*. at 366-68.

[115] RH Act, Rep. Act No. 10354, § 3(1) (Dec. 21, 2012).

management proponents focus on the purported link between economic growth, national development, and fertility and, therefore, work to reduce a country's birth rate as an indication or driver of its economic progress.[116] As the Philippines experienced coercive population management in practice,[117] Filipinos are sensitive to family planning policies premised on economics or development.[118]

When worldwide fears of a population explosion began to take root in the 1950s, 1960s, and 1970s,[119] the Philippines accepted international funding in return for implementing population control measures.[120] International organizations and foreign governments, especially the United States, provided aid to the Philippines premised on reducing population growth.[121] President Marcos signed the 1966 Declaration on Population and the 1969 Executive Order 171, which established the Commission on Population ("POPCOM").[122] In 1971, President Marcos signed Executive Order 233, which authorized POPCOM to oversee a national population program, as well as the Population Act of 1971, which explicitly linked family planning to national development.[123]

In order to affect population policy throughout the country, the national government employed implementers or motivators who attempted to coerce Filipino women to use birth control.[124] While the national government explicitly stressed that men and women had a choice between

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[116] Proponents of population management or control insist "that people are endangering their own survival—and the survival of future generations—by having so many children. This is the basis of the Malthusian philosophy that has defined the dimensions of the population problem." HARTMANN, *supra* note 80, at 11-12.

[117] *See* WARWICK, *supra* note 25, at 15-19.

[118] *See, e.g.*, RH Act, Rep. Act No. 10354, § 3(1) (Dec. 21, 2012) (stating in the "Guiding Principles for Implementation" section that "there shall be no demographic or population targets and the mitigation, promotion and/or stabilization of the population growth rate is incidental to the advancement of reproductive health.")

[119] *See, e.g.*, WARWICK, *supra* note 25, at 3; HARTMANN, *supra* note 80, at 105 (explaining that in 1958, President Eisenhower set up the Draper Committee, named for General William H. Draper, to study the U.S. Military Assistance Program and other aid. While the committee's mandate did not specifically mention population threats, General Draper focused on worldwide population growth).

[120] *See* WARWICK, *supra* note 25, at 84-86.

[121] *See* HARTMANN, *supra* note 80, at 107. The United States explicitly targeted the Philippines as a recipient of population control funding in order to "bring population growth under control." *See* U.S. GOVERNMENT DOCUMENT, NSSM 200, IMPLICATIONS OF WORLDWIDE POPULATION GROWTH FOR U.S. SECURITY AND OVERSEAS INTERESTS 1, 14 (Dec. 10, 1974, *declassified* Dec. 3, 1980). Dr. R.T. "Ray" Ravenholt, the first head of USAID population branch, explained the United States' justification for its population strategies overseas, stating "[w]ithout our trying to help these countries with their economic and social development, the world would rebel against the strong U.S. commercial presence." *Id.*

[122] *Philippines "RH Bills": the shape of things to come?*, PROTECTION OF CONSCIENCE PROJECT, http://www.consciencelaws.org/issues-legal/legal055a.html (last visited Nov. 9, 2012).

[123] *Id.*

[124] *See* WARWICK, *supra* note 25, at 138-139.

numerous contraceptive methods, POPCOM—pressured by the Agency for International Development—promoted methods they considered more effective, including sterilization, the pill, and the IUD.[125] POPCOM made its preferences known to the agencies and facilities it funded and would close clinics not meeting those expectations.[126] During Marcos' presidency, POPCOM pressured family planning workers to meet numerical quotas for the number of individuals sterilized or using contraception.[127] During this era, the government exploited low-income Filipinos' fertility to secure international aid without considering the wants and needs of individuals or families.[128]

Following the People's Power Revolution, President Corazon Aquino (the mother of the current president) transferred the population program to DOH, but the focus became maternal and child health rather than fertility reduction.[129] In 1993, then–President Ramos began the Philippine Population Management Program, which three years later incorporated "responsible parenthood" policies.[130] In 2006, DOH, POPCOM, and local governments began to direct and implement the Responsible Parenthood and Family Planning Program.[131] The RH Act's focus on the reproductive health advances this shift in priorities.

2. The 1991 Decentralization of Essential Services Furthered Inequality in Health Service Provision

The decentralization of Philippine Health Services to LGUs had an immediate[132] and lasting negative effect on health care provision.[133] After the People's Power Revolution in 1986, where democracy replaced an authoritarian regime,[134] the new government promulgated the Local Government Code of 1991.[135] This code made LGUs, which include

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[125] *Id.* at 139.
[126] *Id.* at 139-40.
[127] HARTMANN, *supra* note 80, at 63-64.
[128] *Id.*
[129] *See* PROTECTION OF CONSCIENCE PROJECT, *supra* note 122.
[130] *Id.*
[131] *Id.*
[132] John Grundy at al., *Overview of Devolution of Health Services in the Philippines*, 3 RURAL AND REMOTE HEALTH 1, 9 (2003), *available at* http://www.rrh.org.au/publishedarticles/article_print_220.pdf.
[133] *See, e.g.*, WORLD BANK, *Achieving Universal Health Care in the Philippines* (Jan. 14, 2013), *available at* http://wbi.worldbank.org/sske/results-story/pdf/2639 ("Poor households in the Philippines lack access to health care and proper financial protection against high out-of-pocket health expenses.").
[134] *See* McGeown, *supra* note 47.
[135] *See* sources cited *supra* note 16.

regions, provinces, cities, municipalities, and barangays[136] responsible for basic services, including health.[137] The Local Government code included all three aspects of decentralization: deconcentration (administrative decentralization), devolution (political decentralization), and fiscal decentralization.[138] In 1993, the national government made the Autonomous Region of Muslim Minanao ("ARMM") responsible for the health care of its citizens,[139] effectively localizing nearly all health policy and services. This section will analyze international pressure to decentralize as one of the profound effects of foreign aid as well as the resulting negative effects on contraceptive access and the provision of reproductive healthcare.

By forcing the Philippines to adopt decentralization in order to receive aid, donor organizations and countries and organizations contributed to the Philippines's current difficulties. When examining the failure of decentralization efforts,

> the likely answer is that both developing country governments attempting decentralization and the international donor community selling the idea of decentralization have not paid attention to the fact that historical and contextual factors . . . fundamentally govern how decentralization can unfold in a particular country. [140]

Those who pushed decentralization in the Philippines ignored evidence that "the emergence of the modern states was accompanied by the centralization in terms of rule . . . [specifically] monopolization of . . . fiscal control, and policy-making."[141] By insisting on decentralization, international entities ensured that the Philippines's development would diverge from proven models.[142]

The pressure exerted by international organizations and foreign governments in support of decentralization becomes evident when

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[136] *Local Government Units*, NAT'L STATISTICAL COORDINATION BD., http://www.nscb.gov.ph/activestats/psgc/articles/con_lgu.asp (last visited Sept. 12, 2013).

[137] *See* The Local Government Code, Rep. Act. No. 7106, § 17 (1991) (Phil.).

[138] Masayuki Takahashi, *A Broader View of Fiscal Decentralization in Developing Countries*, *in* FISCAL DECENTRALIZATION AND DEVELOPMENT: EXPERIENCES OF THREE DEVELOPING COUNTRIES IN SOUTHEAST ASIA 17 (Hiroko Uchimura ed., 2012).

[139] DEVOLVING TO THE AUTONOMOUS REGIONAL GOVERNMENT OF THE AUTONOMOUS REGION IN MUSLIM MINDANAO THE POWERS AND FUNCTIONS OF THE DEPARTMENT OF HEALTH, THE CONTROL, AND SUPERVISION OVER ITS OFFICES IN THE REGION AND FOR OTHER PURPOSES, Exec. Ord. 133 (Oct. 29, 1993) (Phil.), *available at* http://www.lawphil.net/executive/execord/eo1993/eo_133_1993.html.

[140] Takahashi, *supra* note 138, at 24.

[141] *Id.* at 26.

[142] *Id.*

international economists and policy experts review decisions made by Philippine legislators. Immediately after decentralization took effect, a national survey revealed the negative impact on health services.[143] Philippine legislators and health workers responded by proposing a recentralization of health services.[144] Rather than examine those proposals as a rational response to widening health inequalities, Western scholars interpreted them as evidence that "legislators revealed their need to remain personally involved in decentralized services."[145] Alternatively, recentralization proposals could be viewed as an opportunity for national leadership to surmount localized obstacles,[146] in this case the inability of LGUs to meet the demands of health care provision.[147]

Local administration of health services negatively affected health care generally and reproductive healthcare specifically.[148] As Masayuki Takahashi, Associate Professor of Public Policy and Public Finance at University of Niigata, explains "unless we accept the naïve claim that whatever decision the local politics make is the correct and best decision, we have no grounds for believing that devolution promises local democracy."[149] Scholars comparing the level of local control in decentralized health systems in developing nations found that Philippine LGUs exercise almost complete control over health policy and administration.[150] While the Local Government Code specifically requires each type of LGU to provide health services, the code does not specifically include reproductive health care as the responsibility of barangays[151] but defines family planning as an aspect of

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[143] Kent Eaton, *Political Obstacles to Decentralization: Evidence from Argentina and the Philippines*, 32 DEV. AND CHANGE 100, 120 (2001).

[144] Juan A. Perez III, *Health Worker Benefits in a Period of Broad Civil Service Reform: The Philippine Experience*, HUM. RESOURCES DEV. J. 1, 10 (1998), *available at* http://www.who.int/hrh/en/HRDJ_2_1_02.pdf.

[145] Eaton, *supra* note 143, at 120.

[146] *See, e.g.*, Romeo B. Lee et. al, *The Influence of Local Policy on Contraceptive Provision and Use in Three Locales in the Philippines*, 17 REPROD. HEALTH MATTERS 99, 104 (2009) ("In August 2009, after years of advocacy, the Magna Carta of Women, a law ensuring woman parity with men, which includes responsible, legal, safe and effective family planning methods for women, became law. Its approval shows that religious opposition can be surmounted through effective advocacy.").

[147] Grundy, *supra* note 132, at 9.

[148] *See* WORLD HEALTH ORG. AND DEP'T. OF HEALTH, PHILIPPINES HEALTH SERVICE DELIVERY PROFILE 8-9 (2012), *available at* http://www.wpro.who.int/health_services/service_delivery_profile_philippines.pdf.

[149] Takahashi, *supra* note 138, at 17.

[150] Thomas J. Bossert & Joel C. Beauvais, *Decentralization of health systems in Ghana, Zambia, Uganda, and the Philippines: a comparative analysis of decision space*, 17 HEALTH POL'Y & FAM. PLAN. 14 (2002), *available at* http://www.hsph.harvard.edu/ihsg/publications/pdf/DecentralizationOfHealthSystemsInGhanaZambiaUgandaAndThePhillippines.pdf

[151] *See* The Local Government Code, Rep. Act. No. 7106, § 17(b)(1)(ii) (1991) (Phil.)..

social welfare services for other LGUs (municipalities, cities, and provinces).[152]

Individual LGU officials face personal pressure from the Catholic Church, multi-national corporations, and local interests to not fund reproductive health care or raise taxes to pay for public health services.[153] Thus far, the Catholic Church's influence on Philippine reproductive policy has been profound:

> No one has calculated how many local leaders support the Church's actions against modern contraceptives, but they are a concern because they can sabotage programmes by telling people only about negative side effects and the "immoral" repercussions of using them. They can also instruct their service providers not to inform women about or recommend these methods. Such actions have been part of the landscape in which the family planning programme struggles in the Philippines and are a continuing challenge.[154]

Additionally, although devolution requires LGUs to provide contraceptive access, local officials hostile to contraception have not done so, further restricting low-income women's access to contraception.[155] The institutional incapacity of LGUs to fulfill devolved responsibilities has exacerbated health service inequities, especially contraceptive access.[156] Finally, LGUs are susceptible to corruption, which negatively affects the health outcomes of their areas of control.[157]

The history of the Magna Carta of Public Health Workers demonstrates the tension inherent in decentralized health services, though it does not directly address reproductive health.[158] After the Philippine Congress decentralized health services in 1991, it passed the Magna Carta of

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[152] *See id.* at § 17(b)(2)(iv).

[153] Langran, *supra* note 109, at 366.

[154] Lee, *supra* note 146, at 99-107.

[155] *Id*. at 101.

[156] *Id*. at 99, 101.

[157] Omar Azfar & Tugrul Gurgur, *Does Corruption Affect Health Outcomes in the Philippines?*, 9 ECON. OF GOVERNANCE 197 (2008), *available at* http://www.springerlink.com/content/u8042tt526202068/fulltext.pdf.

[158] As part of the decentralization of health services in 1991, health workers, previously employed by the national government, became employees of their respective LGUs. *See* An Act Providing for the Magna Carta of Public Health Workers, Rep. Act No. 7350 (July 26, 1993) *available at* http://www.gov.ph/downloads/1992/03mar/19920326-RA-07305-FVR.pdf. This decision immediately reduced health workers' salaries and in response they organized, demanding the reinstatement of their original salaries. *See id*.

Health Workers in April 1992 in an attempt to appease striking health workers.[159] This legislation extended additional benefits to health workers.[160] Yet, when the national government transferred health workers to LGUs, the recipient LGUs considered the benefits mandate "unfunded" and gave those benefits low priority in their local budgets.[161] Between 1994 and 1997, the national government released augmentation funds to assist with Magna Carta requirements, but by 1997, it forced the LGUs to come up with the funding themselves.[162] Relatively few LGUs have been able to fully fund the required Magna Carta benefits, resulting in health workers not receiving the promised benefits.[163]

In response, without repealing the Magna Carta of Public Health Workers, the national government simply altered the LGU requirements. Rather than providing more funding to LGUs, ensuring that LGUs meet their financial obligations, or asking Congress to amend the law, DOH reduced health workers' financial benefits in January 2012.[164] Members of the Alliance of Health Workers maintain that the government is actively violating both the provisions of the Magna Carta of Public Health Workers and the Salary Standardization Law-3.[165] DOH's actions speak to the fiscal tension between the national government and LGUs.

In the current decentralized structure, the national government cannot adequately guarantee predictable and stable resources at the local level[166] and, therefore, cannot certify the provision of contraception or health services. As demonstrated by the controversy around health workers' benefits, the fiscal and administrative tensions between LGUs and the national government due to decentralization threaten the provision of reproductive healthcare required by the RH Act.

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[159] Perez, *supra* note 144, at 2.

[160] *Id.*

[161] *Id.* at 7.

[162] *Id.* at 8

[163] *Id.*

[164] DOH issued Order No. 2012-002, based on the 2012 General Appropriations Act, which reduced two types of benefits. *See also* Marya Salamat, *Aquino Gov't Withdraws Legally Mandated Benefits of Health Workers*, BULATLAT (Mar. 13, 2013), http://bulatlat.com/main/2012/03/13/aquinogov%E2%80%99t-withdraws-legally-mandated-benefits-of-health-workers/ (last visited Nov. 11, 2013).

[165] *Id.*

[166] Hiroko Uchimura & Yurika Suzuki, *Fiscal Decentralization in the Philippines after the 1991 Code: Intergovernmental Fiscal Relationships and the Roles of Fiscal Transfers*, *in* FISCAL DECENTRALIZATION AND DEVELOPMENT 62 (Hiroko Uchimura ed., 2012).

3. Catholicism's Uniform Opposition to Contraception Is Detrimental to Low-Income Filipino Women

The Catholic Church's opposition to modern contraception and abortion serve as the basis for much of the opposition to the RH Act. Whereas eighty percent of Filipinos are Catholic,[167] the 1987 Constitution limits the government's ability to exempt or accommodate religious practices.[168] The Philippine Supreme Court has repeatedly affirmed the separation between the state and religion.[169] In spite of this, most of the arguments opposing the RH Act, delivered in Congress, public conversation, and Supreme Court oral arguments, derive from Catholic teachings on modern contraception, which the Church opposes, deems "artificial," and labels abortifacients.[170]

Rather than allowing the faithful to select contraception methods, Church officials sanction a single method: abstention from sexual intercourse when women are most fertile.[171] Political discussions among legislators regarding contraception are particularly heated because of Church threats to excommunicate those who support contraception.[172] In 2010, when newly-elected President Aquino began discussions with Congress

[167] Weiss, *supra* note 51.

[168] Article III, § 5, of the Philippine Constitution prohibits the establishment of religion and limitations on the free exercise of religion. *See* CONST. (1987), art. III, sec. 5 (Phil), *available at* http://www.gov.ph/the-philippine-constitutions/the-1987-constitution-of-the-republic-of-the-philippines/the-1987-constitution-of-the-republic-of-the-philippines-article-iii/.

[169] *See* Estrada v. Escritor, AM No. P-02-1651 (S.C. Aug. 4, 2003) (Phil.) *available at* http://www.lawphil.net/judjuris/juri2003/aug2003/am_p_02_1651_2003.html (stating that "[n]on-establishment thus calls for government neutrality in religious matters"); Ang Ladlad v. Comelec, G.R. No. 190582 (S.C., Apr. 8, 2010) (Phil.), *available at* http://sc.judiciary.gov.ph/jurisprudence/2010/april2010/190582.htm (stating that "governmental reliance on religious justifications is inconsistent with this policy of neutrality"); Aglipay v. Ruiz, G.R. No. L-45459 (S.C., Mar. 13, 1937) (Phil.), *available at* http://www.lawphil.net/judjuris/juri1937/mar1937/gr_l-45459_1937.html.

[170] *See* Gold, *supra* note 67.

[171] Weiss, *supra* note 51.

[172] For more information on the effect of Catholicism on contraceptive policy in the Philippines, see Enrique Nino Panaligan Leviste, Catholic Church Hegemony Amidst Contestation: Politics and Population Policy in the Philippines, (2011) (unpublished Ph.D. thesis, National University of Singapore), *available at* http://scholarbank.nus.edu.sg/handle/10635/25826 (arguing "that the Church has successfully built and nurtured organic links with state elites and segments of civil society to promote a Catholic dogma-informed agenda, and preserve its hegemonic sway despite regime change"). *See also* Paul W. Mathews, *Religion, Church and Fertility in the Philippines: The BRAC Study Revisited*, 44 PHILIPPINE STUD. 69 (1996) (arguing that proponents of family planning policies must confront public and widespread religiosity); Jennifer Leighn Sta.Ana, The Role of Catholicism on Reproductive Health Care Policies in Mexico and the Philippines, (April 19, 2010) (unpublished M.A. thesis, Georgetown University), *available at* http://repository.library.georgetown.edu/bitstream/handle/10822/553393/sta.AnaJennifer.pdf?sequence=1 (arguing in favor of more transparent division between church and state in order to effectuate reproductive health policy); Natividad, *supra* note 108 (arguing that "at the heart of the complex politics involved in policymaking on reproductive health in the Philippines is the entanglement of national and religious identities. Reproductive policy then operates as a frame through which the politics of the nation, religion and the state get filtered and played out").

about a reproductive health bill, the President of the Catholic Bishops Conference, Bishop Nereo Odchimar, suggested that President Aquino could personally face excommunication for supporting such legislation.[173] In the fall of 2012, as the Philippine Congress debated the RH Act, Socrates B. Villegas, Archbishop of Lingayen-Dagupan, wrote in a pastoral letter that "contraception corrupts the soul."[174] He then linked contraception to abortion: "a contraceptive mentality is the mother of an abortion mentality."[175] These tactics allowed the Catholic Church to stall approval of the RH Act for fourteen years, highlighting the Church's overwhelming influence and the Philippines's active religious population.[176]

Not all religious faiths in the Philippines oppose contraception or the RH Act. In the Autonomous Region in Muslim Mindanao (ARMM), religious leaders support contraceptive use by married couples. On November 22, 2003, the Assembly of Darul-Iftah issued a fatwah on Reproductive Health and Family Planning stating: "reproductive health and family planning, as practiced under valid reasons and recognized necessities, are in accordance with the teachings of Islam."[177] In 2010, the ARMM Regional Legislative Assembly passed the Muslim Mindanao Autonomy Act No. 280, which assures access to family planning services and supplies, as well as youth sexuality education.[178] In 2012, the Assembly passed its version of the RH Act.[179] The "Reproductive Health Care Act of 2012 for the Autonomous Region in Muslim Mindanao" ensures access to reproductive health services and education for ARMM citizens.[180]

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[173] Jill Beltran, *CBCP chief denies excommunication threat vs. Aquino*, SUNSTAR MANILA (Oct. 1, 2010), *available at* http://www.sunstar.com.ph/manila/local-news/cbcp-chief-denies-excommunication-threat-vs-aquino.

[174] Socrates B. Villegas, *Contraception is Corruption!*, CBCP NEWS (Dec. 15, 2012), *available at* http://www.cbcpnews.com/cbcpnews/?p=9989.

[175] *Id.*

[176] *See, e.g.*, Abigail C. Malalis, *Jesuits support Catholic bishops vs. RH bill*, SUNSTAR (Aug. 29, 2012), *available at* http://www.sunstar.com.ph/cagayan-de-oro/local-news/2012/08/29/jesuits-support-catholic-bishops-vs-rh-bill-239834 (explaining that Jesuits consider the Bishops to be their guides).

[177] *Muslim Decree on Reproductive Health, Family Planning Underway*, PHILSTAR (Feb. 28, 2004), http://www.philstar.com/nation/240599/muslim-decree-reproductive-health-family-planning-underway (last visited Sept. 23, 2013).

[178] An Act providing for the Gender and Development Code of the Autonomous Region in Muslim Mindanao and for other purposes, MMA Act No. 280 (2001), *available at* http://armm.gov.ph/armm-content/uploads/2013/03/MMA%20Act%20No.%20281.pdf.

[179] An Act Providing for Reproductive Health Care, MMA Act No. 2921 (Dec. 16, 2012).

[180] *Id.*

D. Philippine Law Supports Contraceptive Access

Support for reproductive justice in the Philippines can be found in local, national, and international law,[181] as cited by the RH Act.[182] Read for their plain language, the Philippine Constitution, multiple Philippine statutes, and numerous international agreements to which the Philippines is a party support contraceptive access. These sources of law include rights from which contraceptive access originates: the right to health, the right to family planning, women's rights, and the right to equality, among others. The right to family planning, which the UN Population Fund recently termed a fundamental right,[183] includes the right to goods and services, information and education, and informed consent.[184] This right is closely related to the right to health, which includes sexual and reproductive health.[185] Impeding access to contraception can violate both women's rights and the right to equality.[186] Reproductive justice will exist in the Philippines when the most marginalized women have the ability, the support, and the means necessary to effectuate all of these rights. This section will examine a rights-based approach to contraceptive access derived from multiple sources, including the Philippine Constitution, Philippine statutes affecting reproductive healthcare, and international treaties ratified by the Philippines.

1. The 1987 Philippine Constitution Supports Contraceptive Access

The 1987 Constitution details robust rights including the right to health, the rights of women, and the rights of married couples, all of which

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[181] For example, local ordinances in Luzon, Visayas, and Mindanao support contraceptive access. *See, e.g.*, Comment-in-Intervention for Filipino Catholic Voices for Reproductive Health, Imbong v. Ochoa, G.R. No. 204819, 4 (S.C. Jan. 2, 2013) (Phil.), *available at* http://sc.judiciary.gov.ph/microsite/rhlaw/; CONST. (1987), art. II, sec. 15 (Phil.) (stating that "the State shall protect and promote the right to health of the people and instill health consciousness among them"); ICESCR, *supra* note 21, (stating that "[t]he States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health").

[182] RH Act, Rep. Act No. 10354, § 2 (Dec. 21, 2012).

[183] MARGARET GREENE, SHAREEN JOSHI, & OMAR ROBLES, BY CHOICE, NOT BY CHANCE: FAMILY PLANNING, HUMAN RIGHTS, AND DEVELOPMENT 1 (UNFPA ed., 2012), *available at* http://www.unfpa.org/webdav/site/global/shared/swp/2012/EN_SWOP2012_Report.pdf.

[184] *Id.* at 8.

[185] *See, e.g.*, U.N. COMM. ON ECON., SOC. AND CULTURAL RIGHTS, GENERAL COMMENT 14: THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH, U.N. Doc. E/C.12/2000/4 (2000) (stating that "the realization of women's right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health").

[186] *See* U.N. Secretary-General, *Interim Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, U.N. Doc. A/66/254 (Aug. 3, 2011) (by Anand Grover) (stating that"[c]riminal laws and other legal restrictions affecting sexual and reproductive health may amount to violations of the right to health").

support a right to reproductive health and to contraceptive access. The right to gender equality is also protected by the Constitution, as stated by Senator Leticia Ramos-Shahani, head of the Philippine Delegation to the Fourth United Nations ("UN") World Conference on Women in Beijing, who said, "the principle of the fundamental equality between women and men is enshrined in the Philippine Constitution."[187] Although these Constitutional rights have yet to be fully interpreted by the Philippine Supreme Court,[188] the RH Act cited each of them as a rationale for the law's provisions.[189]

The right to health is contained in various articles of the Philippine Constitution.[190] Article II, § 15 states that "the State shall protect and promote the right to health of the people and instill health consciousness among them."[191] In Article XIII, § 11, the state is required to prioritize healthcare for "needs of the underprivileged, sick, elderly, disabled, women, and children," and it must attempt to provide "free medical care to paupers."[192] Article XIII, § 12 requires an "effective food and drug regulatory system."[193] Taken together, the Philippines has an affirmative duty to better the health of all Filipinos with priority given to low-income people who should receive free health care.

Positive rights to health bolster the power of individual decision-making, because rights beget enforceable claims, and claimants of positive rights do not depend solely on the interest or goodwill of their governments.[194] In order to make decisions in their reproductive lives and to access necessary services and supplies, regardless of one's socioeconomic status, many individuals require the affirmative intervention of their governments.[195] The existence of affirmative rights in the Philippine Constitution strengthens each individual's claim to contraception.

Other provisions supporting a right to reproductive health through the rights of women and married couples are found throughout the Constitution.

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[187] United Nations Fourth World Conference on Women, Sept. 4-15, 1995, *Towards the 21st Century of Women: From Commitment to Action, Statement of Leticia Ramos-Shahani*, http://www.un.org/esa/gopher-data/conf/fwcw/conf/gov/950905123414.txt (last visited on Nov. 9, 2013).

[188] *See* Desierto, *supra* note 12 at 11 (stating that "the Philippine Supreme Court has proved reticent in providing . . . recognition for socio-economic rights that are already textualized in Articles II, XIII, IV, and XV of the 1987 Constitution").

[189] *See* RH Act, Rep. Act No. 10354, § 2 (Dec. 21, 2012).

[190] While § 15 of the Philippine Constitution does not employ the term "all people" or highlight low-income people, Article II, § 9 describes the state's responsibility to "free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all." CONST. (1987), art. II, sec. 9 (Phil.).

[191] *Id.* at art. II, sec. 15.

[192] *Id.* at art. XIII, sec. 11.

[193] *Id.* at art. XIII, sec. 12.

[194] JONATHAN WOLFF, THE HUMAN RIGHT TO HEALTH, 15 (2012).

[195] THE REPRODUCTIVE RIGHTS READER, *supra* note 53, at 5.

Article II, § 14 confirms the "fundamental equality" of men and women,[196] which advances reproductive health. Section 12, the focus of much of the RH Act debate,[197] requires the state to "equally protect the life of the mother and the life of the unborn from conception."[198] Whereas opponents of the RH Act contend that the Constitutional Commission defined conception as fertilization, no evidence for that position exists.[199] The Commission chose to balance the life of the women and the fetus rather then privileging the fetus as advocated for by conservative Catholics.[200] Article XV, § 3 stipulates that the rights of married couples include the right to have "a family in accordance with their religious convictions and the demands of responsible parenthood."[201] The RH Act respects all of these rights by prohibiting abortion and providing access to contraception and reproductive healthcare.

The Constitutional rights discussed above have not been fully interpreted by the Supreme Court of the Philippines. Two recent cases, *Oposa v. Factoran* and *Basco v. PAGCOR*, have implications[202] for rights-based claims even though they do not deal with reproductive health specifically. A third case, *Lourdes Osil et al. v. Mayor of Manila*, demonstrates the judiciary's unwillingness to engage in questions concerning reproductive health.[203]

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[196] CONST. (1987), art. II, sec. 14 (Phil.).

[197] *See, e.g.*, Villegas, *supra* note 174 (stating that "a contraceptive mentality is the mother of an abortion mentality. The wide and free accessibility of contraceptives, even to the youth, will result in the destruction of family life and in greater violence against women").

[198] *See* CONST. (1987), art. II, sec. 12 (Phil.); Imbong v. Ochoa, G.R. No. 204819, 4 (S.C. Jan. 2, 2013) (Phil.), *available at* http://sc.judiciary.gov.ph/microsite/rhlaw/.

[199] Framers of the 1987 constitution discussed the prohibition about abortion, but did not determine the definition of conception. *See* Records of the Constitutional Commission, R.C.C. No. 85 (Sept. 17, 1986) (Phil.), *available at* http://primacyofreason.blogspot.com/2010/12/constitutional-commission-fertilization.html ("MR. OPLE: But we would leave to Congress the power, the mandate to determine [the definition of conception].").

[200] CTR. FOR REPROD. RIGHTS, FORSAKEN LIVES: THE HARMFUL IMPACT OF THE PHILIPPINE CRIMINAL ABORTION BAN 17 (2009), *available at* http://www2.ohchr.org/english/bodies/hrc/docs/ngos/CRR_AnnexIIPhilippines104.pdf.

[201] CONST. (1987), art. XV, sec. 3 (Phil.).

[202] While the Philippines is a civil law country, the Philippine Supreme Court applies the concept of stare decisis. *See* Confederation of Sugar Producers Ass'n v. Dep't of Agrarian Reform, G.R. No. 169514 (S.C., Mar. 30, 2007) (Phil.), *available at* http://www.lawphil.net/judjuris/juri2007/mar2007/gr_169514_2007.html ("Time and again, the Court has held that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. Stare decisis et non quieta movere.").

[203] *See* Elisabeth Aguiling-Pangalangan & Sherwin Dwight O. Ebalo, CHR BACKS PAUPER LITIGANTS VS. MANILA CONTRACEPTIVE BAN 2-3 (ReproCen ed., 2011), *available at* http://www.reprocen.com/CHR-OSIL.pdf; Jose Trias Monge, *Legal Methodology in Some Mixed Jurisdictions*, 78 TUL. L. REV. 333 (2003) (discussing the various authority for Philippine Supreme Court decisions).

In *Oposa v. Factoran*, which concerned environmental pollution,[204] the Supreme Court held that rights found in the Declaration of Principles and State Policies instead of the Bill of Rights, are not "less important than any of the civil and political rights enumerated in the latter."[205] The Supreme Court specifically examined Article II, § 15 and § 16, the right to health and the right of the people to a balanced and healthful ecology.[206] The Court's framed these rights as "nothing less than self-preservation and self-perpetuation . . . the advancement of which may even be said to predate all governments and constitutions."[207] The Court then concluded that the Constitutional Commission required the government to protect and advance both rights.[208] This holding establishes the right to health as self-executing and judicially enforceable,[209] making it effective as a basis for contraceptive access.

The Supreme Court case *Basco v. PAGCOR*, which concerned the legality of gambling,[210] confirmed that LGUs must adhere to national policy and do not have the autonomy to ignore national directives or legislation.[211] In its opinion, the Supreme Court interpreted the meaning of the phrase "local autonomy" in the Philippine Constitution. The court stated: "the principle of local autonomy under the 1987 Constitution simply means 'decentralization.' It does not make local governments sovereign within the state or an "*imperium in imperio*."[212] Therefore, LGUs are required to implement national legislation, including the RH Act.

In *Lourdes Osil et al. v. Mayor of Manila*, twenty low-income women and men asked the Supreme Court to invalidate as unconstitutional the city of Manila's Executive Order 003, which operated as a de facto ban on

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[204] Oposa v. Factoran, G.R. No. 101083 (S.C., July 30, 1993) (Phil.), *available at* http://www.lawphil.net/judjuris/juri1993/jul1993/gr_101083_1993.html. *See also* Ma. Socorro Z. Manguiat & Vicente Paolo B. Yu III, *Maximizing the Value of Oposa v. Factoran*, 15 GEO. INT'L ENVTL. L. REV. 487 (2003).

[205] *See* Oposa v. Factoran, G.R. No. 101083 (S.C., July 30, 1993) (Phil.) at 11, *available at* http://www.lawphil.net/judjuris/juri1993/jul1993/gr_101083_1993.html.

[206] *Id.*

[207] *Id.*

[208] *Id.*

[209] While Justice Florentino Feliciano disagrees with the majority, his concurring opinion confirms that both § 15 and § 16 are self-executing in their current form. *See id*.; Desierto, *supra* note 12, at 114 (stating that "the Philippine Supreme Court has declared some socio-economic rights provisions in the 1987 Constitution to be justiciable [such as the right to health in *Oposa v. Factoran*]").

[210] Basco v. PAGCOR, G.R. No. 91649, 197 S.C.R.A 52 (May 14, 1991) (Phil.), *available at* http://www.lawphil.net/judjuris/juri1991/may1991/gr_91649_1991.html.

[211] CTR. FOR REPROD. RIGHTS, *supra* note 28, at 47.

[212] *Id. See also* JOAQUIN BERNAS, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, Vol. II, 374 (1988) (quoting III Records of the 1987 Constitutional Commission, pp. 435-436).

modern contraceptives in public health centers in Manila city.[213] The plaintiffs' argued that Executive Order 003 violated various constitutional rights, including the right to family planning, the right to health of women, the right to privacy, the right gender equality, equality in access to health, and equality in autonomy and decision-making.[214] Over the course of the litigation, the Philippine Court of Appeals and the Supreme Court dismissed the case in 2008, as did the Regional Trial Court in Manila City in 2009, and the Supreme Court again in 2009.[215] Each of these dismissals rested on technical grounds and no court examined the merits of the plaintiffs' claims.[216] The fact that the Supreme Court, the Court of Appeals, and the Regional Trial Court each refused to reach the merits of the litigation and dismissed the cases suggests that perhaps the courts could not fault the plaintiffs' Constitutional analysis, but did not want to reach a decision on such a divisive issue.[217]

As it stands now, the question of whether the courts will interpret the Philippine Constitution to support contraceptive access is unanswered. The Constitutional provisions discussed should be interpreted to include a right to contraceptive access. The right to health is self-executing, judicially enforceable, and includes reproductive health, while fundamental equality requires that women have equal access to reproductive healthcare.

2. National Statutes Support Contraceptive Access

Existing Philippine laws support contraceptive access. The Local Government Code of 1991,[218] the Magna Carta of Women,[219] and the Labor Code[220] all require the provision of reproductive health services and supplies. The Local Government Code prescribes the responsibilities of all LGUs and requires the provision of health services, including family planning.[221]

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[213] CTR. FOR REPROD. RIGHTS, *supra* note 28, at 10-11; *Manila City's Contraception Ban*, CTR. FOR REPROD. RIGHTS, http://reproductiverights.org/en/press-room/manila-citys-contraception-ban (last visited Sept. 23, 2013); *Human Rights Framework*, CTR. FOR REPROD. RIGHTS, http://reproductiverights.org/sites/crr.civicactions.net/files/flash/Toolkit%20-%20Philippines%2007-2009%20uncropped.pdf (last visited Oct. 29, 2013).

[214] CTR. FOR REPROD. RIGHTS, *Human Rights Framework*, *supra* note 213.

[215] *See* Aguiling-Pangalangan & Ebalo, *supra* note 203, at 2.

[216] CTR. FOR REPROD. RIGHTS, *Human Rights Framework*, *supra* note 215.

[217] *See* Aguiling-Pangalangan & Ebalo, *supra* note 203.

[218] *See* The Local Government Code, Rep. Act. No. 7106, § 17 (1991) (Phil.).

[219] *See* An Act Providing for the Magna Carta of Women, Rep. Act 9710, § 17 (Aug. 14, 2009) (Phil.), *available at* http://www.gov.ph/2009/08/14/republic-act-no-9710/.

[220] *See* Labor Code of the Philippines, Pres. Dec. 442 (1974) (Phil.).

[221] Basic health services include family planning. *See* The Local Government Code, Rep. Act. No. 7106, § 17 (1991) (Phil.).

The Magna Carta of Women, RA 9710, enacted as enabling legislation for CEDAW, specifies that the Philippines will "accord women the rights, protection, and opportunities available to every member of society."[222] Section 17 ensures access to "[r]esponsible, ethical, legal, safe, and effective methods of family planning."[223] On March 30, 2010, the Philippine Commission on Women adopted the rules and regulations implementing RA 9710.[224] In § 20, "Women's Right to Health," the Commission reiterated that access to responsible, ethical, legal, safe, and effective methods of family planning must be assured.[225] The drafters of the RH Act used this language to describe contraception[226] that the government has an obligation to provide.[227]

Finally, the Labor Code of the Philippines[228] requires that any employer with 200 or more employees[229] must provide free family services including "contraceptive pills and intrauterine devices."[230] The code expressly prohibits the denial of contraceptives to female employees.[231] The Philippine Constitution's affirmative rights, including the self-executing right to health, support contraceptive access, as do Philippine statutes that already mandate the provision of family planning supplies. Together these sources of law underscore the constitutionality of the RH Act.

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[222] Melissa Upreti, *What to Expect: Legal Developments and Challenges in Reproductive Justice*, 15 CARDOZO J.L. & GENDER 503, 582 (2009), *available at* http://www.cardozolawandgender.com/uploads/2/7/7/6/2776881/15-3_symposium.pdf (stating that "[i]f legislation is crafted in a way that there's some acknowledgment of human rights or human rights norms, if there's a commitment to human rights, then that can be a basis for ensuring the practical fulfillment of rights in the domestic arena").

[223] *See* An Act Providing for the Magna Carta of Women, Rep. Act 9710, § 17 (Aug. 14, 2009) (Phil.), *available at* http://www.gov.ph/2009/08/14/republic-act-no-9710/.

[224] Implementing Rules and Regulations of the Magna Carta of Women (Mar. 30, 2013) (Phil.), *available at* http://ncmb.ph/Files/RA%209710%20MAGNA%20CARTA%20FOR%20WOMEN%20With%20IMPLEMENTING%20RULES%20(IRR).pdf.

[225] *See* An Act Providing for the Magna Carta of Women, Rep. Act 9710, § 17 (Aug. 14, 2009) (Phil.), *available at* http://www.gov.ph/2009/08/14/republic-act-no-9710/.

[226] *See* RH Act, Rep. Act No. 10354, § 2(d) (Dec. 21, 2012).

[227] *See* An Act Providing for the Magna Carta of Women, Rep. Act 9710, § 17 (Aug. 14, 2009) (Phil.), *available at* http://www.gov.ph/2009/08/14/republic-act-no-9710/.

[228] LABOR CODE, Exec. Ord. 442, as amended (Phil.), *available at* http://www.dole.gov.ph/labor_codes/view/1.

[229] *Id*. at Book IV, Title 1, Ch. 1, Art. 157 (stating that "[i]t shall be the duty of every employer to furnish his employees in any locality with free medical and dental attendance and facilities consisting of: . . . 2) The services of a full-time registered nurse, a part-time physician and dentist, and an emergency clinic, when the number of employees exceeds two hundred (200)").

[230] *Id*. at Book III, Art. 134.

[231] *Id*. at Book III, Art. 137.

3. Ratified International Treaties Support Contraceptive Access

Treaty obligations require action on the part of the Philippine government. The UN supported the RH Act because it can help the Philippine government fulfill its reproductive health obligations.[232] If the Philippine government does not meet those obligations to its citizens, the international community has limited recourse: persuasion appears to be the only option for responding to noncompliance.[233] In addition to ratifying various human rights treaties, the Philippines signed the Vienna Convention on the Law of Treaties on May 23, 1969, and ratified the Convention on November 15, 1972.[234] The Convention, which came into force on January 27, 1980,[235] states "every treaty in force is binding upon the parties to it and must be performed by them in good faith."[236] The Philippine Constitution governs the incorporation of treaties and the ratification of a treaty creates binding obligations.[237] This section will examine the following international agreements: International Covenant on Economic, Social and Cultural Rights (ICESCR) and CEDAW.[238] Each agreement requires parties to submit reports on the legislative, judicial, administrative or other measures that they have adopted to implement the agreements' provisions.[239]

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[232] Press Release, United Nations Population Fund, UN in the Philippines Urges Passage of Reproductive Health Bill (Aug. 5 2012), *available at* http://asiapacific.unfpa.org/public/pid/11770#sthash.cJ2bFoPb.dpuf.

[233] WOLFF, *supra* note 194, at 17.

[234] Vienna Convention on the Law of Treaties, G.A. Res. 2166 (XXI), U.N. Doc. A/Conf./39/27 at 289 (May 23, 1969), *available at* http://www.unhcr.org/refworld/docid/3ae6b3a10.html.

[235] *Id.*

[236] *Id.*

[237] *See* CONST. (1987), art. VII, sec. 21 (Phil.); AN INTRODUCTION TO PUBLIC INTERNATIONAL LAW 57 (Joaquin G. Bernas, ed. 2002); JOAQUIN G. BERNAS, CONSTITUTIONAL STRUCTURE AND POWERS OF GOVERNMENT Part I (2005).

[238] Although not discussed here, other treaties could provide a foundation for a right to reproductive health. *See, e.g.*, International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 171, U.N. Doc. A/6316 (Dec. 16, 1966), *available at* http://www.refworld.org/docid/3ae6b3aa0.html (explaining that Article 23(2), as interpreted by the Human Rights Committee, means that "women should be given access to family planning methods"); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. Doc. A/39/51 (June 26, 1987), *available at* http://www.refworld.org/docid/3ae6b3a94.html.

[239] *See, e.g.*, Convention on the Elimination of All Forms of Discrimination Against Women, *Reporting*, http://www.un.org/womenwatch/daw/cedaw/reporting.htm (last visited Oct. 29, 2013) ("The Convention obliges States parties to submit to the Secretary-General a report on the legislative, judicial, administrative or other measures that they have adopted to implement the Convention within a year after its entry into force and then at least every four years thereafter or whenever the Committee on the Elimination of Discrimination against Women ("CEDAW") so requests.").

a. The ICESCR supports contraceptive access

The ICESCR supports the claim that reproductive healthcare should be available for all, regardless of socioeconomic status.[240] Scholars consider this covenant to be the articulation of many of the rights set out in the Universal Declaration of Human Rights.[241] The Philippines signed the treaty on December 19, 1966, and ratified it on June 7, 1974, without reservations.[242] Article 12 provides for the right to the highest attainable standard of health.[243]

In 2000, the UN Economic and Social Council published General Comment 14,[244] which prioritized reproductive health.[245] Comment 14 discussed how the right to health should be "approached in practice," as well as the myriad factors that affect the right, including access, international priorities, and group-specific recommendations.[246] The Council confirmed that contraception and family planning are central to the right to health.[247] Section 8 explains that the right to health includes sexual and reproductive freedom and equality of opportunity.[248] By defining contraception as an aspect of basic health and providing access to the lowest-income women, the RH Act attempts to meet the Philippines' obligation as a party to ICESCR.

Comment 14 directly addresses the issue of access to contraception. The Council called on all parties, including the Philippines, to provide access to comprehensive sexual and reproductive health services and remove all barriers such as cultural practices and norms that inhibit this access.[249]

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[240] *See* Aart Hendriks, *The Right to Health Promotion and Protection of Women's Right to Sexual and Reproductive Health Under International Law: The Economic Covenant and the Women's Convention*, 44 AM. U. L. REV. 1123 (1995).

[241] *See, e.g.*, WOLFF, *supra* note 194, at 2.

[242] ICESCR, *supra* note 21. Scholars consider this covenant to be the articulation of the rights set out in the Universal Declaration of Human Rights of 1948 ("UDHR"), Article 25(1). *See, e.g.*, WOLFF, *supra* note 194, at 2.

[243] ICESCR, *supra* note 21.

[244] General Comments are the interpretation of human rights provisions published by the Committee on Economic, Social and Cultural Rights. *See* Comm. on Econ., Soc. & Cultural Rights, *General Comment 14: The Right to the Highest Attainable Standard of Health*, § 8, E/C.12/2000/4 (Aug. 11, 2000). While non-binding, general comments "can be viewed as authoritative interpretative instruments, which give rise to a normative consensus on the meaning and scope of particular human rights." *See* Conway Blake, *Normative Instruments in International Human Rights Law: Locating the General Comment*, 29-31 (Ctr. for Human Rights & Global Justice, Working Paper No. 17, 2008), *available at* http://www.chrgj.org/publications/docs/wp/blake.pdf.

[245] Parties' core obligations include to "ensure reproductive, maternal (pre-natal as well as post-natal) and child health care." *See* ICESCR, *supra* note 21, at § 44.

[246] WOLFF, *supra* note 194, at 12.

[247] *Id.* at 29.

[248] *See* Comm. on Econ., Soc. & Cultural Rights, *supra* note 244.

[249] *Id.* at § 21 (stating that "[t]he realization of women's right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual

Further, Comment 14 stresses equity and equal access for low-income individuals.[250] The RH Act echoes this interpretation of ICESCR by prioritizing the needs of low-income people and defining contraception as an aspect of basic healthcare.[251]

b. The CEDAW supports contraceptive access

The CEDAW emphasizes the importance of reproductive healthcare for women.[252] The Philippines signed CEDAW on July 15, 1980, and ratified it on August 5, 1981, without reservations.[253] Additionally, the country signed and ratified the Optional Protocol in 2000 and 2003, respectively.[254] On August 14, 2009, Philippine President Gloria Arroyo signed the Magna Carta of Women, Republic Act 9710, the domestic version of CEDAW.[255]

CEDAW protects the right to family planning, which obligates all parties, including the Philippines, to do the same. As the "key factor in maintaining reproductive health for women is control of their fertility," Article 12 requires parties to ensure that women have equal access to contraception.[256] Additionally, the convention protects individual rights and responsible parenthood.[257] The Beijing Declaration, composed at the Fourth UN Convention on Women in Beijing in 1995 with Philippine delegates in attendance, includes two significant statements regarding reproductive health.[258] Section 17 states that "the right of all women to control all aspects of their health, in particular their own fertility, is basic to their empowerment."[259] Section 30 mandated "equal access to and equal

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and reproductive health. It is also important to undertake preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights").

[250] *Id.* at § 12(b).

[251] *See* RH Act, Rep. Act No. 10354, § 3(d) (Dec. 21, 2012).

[252] Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, U.N. Doc. A/RES/34/180 (Dec. 19, 1979), *available at* http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en [hereinafter CEDAW].

[253] *Id.*

[254] Dhrubajyoti Bhattacharya, *The Perils of Simultaneous Adjudication and Consultation: Using the Optional Protocol to Cedaw to Secure Women's Health*, 31 WOMEN'S RTS. L. REP. 42 (2009).

[255] *See* RH Act, Rep. Act No. 10354, § 2(d) (Dec. 21, 2012).

[256] MACKLIN, *supra* note 81, at 137.

[257] Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, U.N. Doc. A/RES/34/180 (Dec. 19, 1979), *available at* http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en [hereinafter CEDAW].

[258] United Nations Fourth World Conference on Women, Sept. 4-15, 1995, *Beijing Declaration, available at* http://www.un.org/womenwatch/daw/beijing/beijingdeclaration.html.

[259] *Id.*

treatment of women and men in education and health care and enhance[ment of] women's sexual and reproductive health as well as education."[260] As both a party to CEDAW and an enthusiastic participant in Beijing, representatives of the Philippine government have continuously expressed their support for the convention's principles and provisions.

III. THE RH ACT DOES NOT GO FAR ENOUGH TO PROVIDE NECESSARY ACCESS TO CONTRACEPTION

Low-income women in the Philippines need access to contraception in order to realize their rights to family planning, reproductive health, and equality.[261] Reproductive justice will exist only when the most marginalized women have the tools and support they need to decide whether and when to have a child and how to parent their existing children. While the RH Act is likely constitutional and should be affirmed by the Supreme Court, it does not go far enough in establishing contraceptive access as a necessary first step to the rights detailed in Part II. This Part will explain A) why low-income women need access to contraception; B) how the petition to the Supreme Court contending the unconstitutionality of the RH Act is based on a flawed argument and, therefore, should be denied; and C) in what ways the RH Act must be extended to provide adequate contraceptive access and ensure low-income women's rights.

A. Contraceptive Access Would Create Benefits Beyond Reproductive Decision-Making for Low-Income Filipino Women

The reproductive justice framework privileges the leadership of the most marginalized in order to build their social, political, and economic power, which creates lasting effects beyond reproductive decision-making. The lowest-income Filipino women recognize that they face increased barriers to family planning access[262] and leadership around contraceptive access should come from them.[263] Studies in the Philippines have linked an

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[260] *Id*.

[261] Increased access to contraception would alleviate low-income Philippine women's unmet need for contraception, affording them the tools necessary to decide when and whether to have a child. *See* SISTERSONG, *supra* note 3; Kara Britt & Roger Short, *The Plight of Nuns: Hazards of Nulliparity*, 379 THE LANCET 2322 (2012); Dreweke, *supra* note 75 (stating that a literature review demonstrates that contraception provides social and economic benefits).

[262] *See* NAT'L STATISTICS OFFICE, *supra* note 1, at 85.

[263] *See On the Passing of RH into Law: The Fight is Won*, KAISA KA (UNITY OF WOMEN FOR FREEDOM), *Continue the Fight!*, *available at* http://kaisaka.tumblr.com/post/39592738286/on-the-passing-

increased number of children to a decline in family savings, a reduction in maternal employment rates and income, and a smaller proportion of children attending school.[264] The effects of additional children on families living in poverty are even greater because "the associations between larger family size, poverty incidence and vulnerability to poverty are strong and enduring."[265] While contraception's positive impact on families' economic well-being can seem like a compelling reason for the government to act, reproductive justice can only be achieved through a focus on systemic change driven by low-income Filipino women themselves as those most affected by current law and policy.

Contraceptive access positively affects women's self-determination because the lack of access is a significant barrier to women taking leadership against the social inequities they face. Filipino women's "ability to exercise self-determination—including in their reproductive lives—is impacted by power inequities inherent in . . . society's institutions, environment, economics, and culture."[266] Contraceptive access would allow the lowest-income women to make decisions about when and whether to have a child. In turn, the ability to make those initial reproductive decisions would afford them the opportunity to begin addressing other systematic inequalities they face.

B. The Petition to Invalidate the RH Act is Procedurally and Substantively Flawed

The petitioners seek to deny contraceptive access to the lowest-income women, but their petition for certiorari and prohibition should fail due to its procedural and substantive flaws. The Imbongs allege that the RH Act both negates the ideals and the aspirations of the Philippine people and exceeds governmental powers as set forth in the Constitution.[267] However, laws passed by the Philippine Congress all carry the presumption of

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of-rh-into-law-the-fight-is-won (grassroots organization advancing the rights and welfare of Filipina women).

[264] A. C. Orberta, *Poverty, Vulnerability, and Family Size: Evidence from the Philippines*, ADB Institute Discussion Paper No. 68 (2005), *available at* http://www.adbi.org/files/2006.05.rp68.pvf.evidence.philippines.pdf.

[265] *Id.* at III.

[266] *See* FORWARD TOGETHER, *supra* note 3, at 2.

[267] Imbong v. Ochoa, G.R. No. 204819, 4 (S.C. Jan. 2, 2013) (Phil.), *available at* http://sc.judiciary.gov.ph/microsite/rhlaw/.

legality.[268] The Supreme Court in *Basco v. Pagcor* explained the petitioner's burden:

> for [a law] to be nullified, it must be shown that there is a clear and unequivocal breach of the Constitution . . . Those who petition this Court to declare a law, or parts thereof, unconstitutional must clearly establish the basis for such a declaration. Otherwise, their petition must fail.[269]

Both in their petition and at oral arguments, the petitioners and their counsel failed to meet this threshold.

Procedurally, the Supreme Court lacks original jurisdiction to hear the case. Petitioners filed the petition under Rule 65 of Philippine Rules of Civil Procedure, an assertion confirmed by their counsel at oral argument.[270] Rule 65 §§ 1 and 2 respectively lay out the requirements for certiorari and prohibition,[271] neither of which the petitioners can meet.[272] Both sections require that "no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law" exists.[273] Petitioners appear to read this language as exempting them from the normal course of lower court adjudication. The Office of the Solicitor General stated that petitioners actually seek declaratory relief,[274] over which the Supreme Court has no jurisdiction.[275]

The petitioners also cannot demonstrate standing or the personal harm required to have their petition heard by the Court.[276] The Philippine courts

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[268] Basco v. PAGCOR, G.R. No. 91649, 197 S.C.R.A 52 (May 14, 1991) (Phil.), *available at* http://www.lawphil.net/judjuris/juri1991/may1991/gr_91649_1991.html.

[269] *Id.*

[270] Imbong v. Ochoa, G.R. No. 204819, 4 (S.C. Jan. 2, 2013) (Phil.), *available at* http://sc.judiciary.gov.ph/microsite/rhlaw/; *Oral Arguments Audio Records, RH Law, Part 1, July 9, 2013*, SUPREME COURT OF THE PHILIPPINES, *available at* http://sc.judiciary.gov.ph/microsite/rhlaw/.

[271] Phil. R. Civ. P. 65, *available at* http://www.lawphil.net/courts/rules/rc_1-71_civil.html#r58.

[272] *Id.*

[273] *Id.*

[274] *See* Office of Solicitor General, Consolidated Comment, (S.C., May 9, 2013), *available at* http://sc.judiciary.gov.ph/microsite/rhlaw/osg-comment.php.

[275] Declaratory judgments are governed by Civil Procedure Rule 63, of which § 1 states: "Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder." Phil. R. Civ. P. 63 § 1, *available at* http://www.lawphil.net/courts/rules/rc_1-71_civil.html#r58.

[276] *See* Imbong v. Ochoa, G.R. No. 204819, 4 (S.C. Jan. 2, 2013) (Phil.), *available at* http://sc.judiciary.gov.ph/microsite/rhlaw/.

require plaintiffs to establish legal standing in order to bring a case.[277] In *Galicto v. Aquino*, the Supreme Court explained that individuals are allowed to raise a constitutional question when they

> (1) [c]an show that [they] will personally suffer some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action.[278]

Nowhere in the petition do the petitioners discuss the harm that they personally have experienced or will experience. In fact, the questions they present focus solely on Congressional and Executive branch powers.[279] Their rationale for why the Supreme Court should grant the petition is attenuated and only concerns them personally insofar as they are members of the general "Filipino people," which does not meet the standing requirement of actual or threatened personal injury.[280] Furthermore, the arguments made by petitioner's counsel in oral arguments on July 9, 2013, had no legal foundation and were inaccurate.[281] Without explaining the petitioners' standing or without a legal foundation for the alleged harm they face, counsel could not cite any legal foundations for petitiones' arguments.[282]

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[277] For a discussion of standing in the Philippines, see Bryan Dennis Tiojanco, *Stilted Standards of Standing, The Transcendental Importance Doctrine, and the Non-Preclusion Policy they Prop*, 86 PHIL. L.J. 605 (2012).

[278] Galicto v. Aquino, G.R. No. 193978 (S.C. Feb. 20, 2012) (Phil.), *available at* http://sc.judiciary.gov.ph/jurisprudence/2012/february2012/193978.htm.

[279] Imbong v. Ochoa, G.R. No. 204819, 4 (S.C. Jan. 2, 2013) (Phil.), *available at* http://sc.judiciary.gov.ph/microsite/rhlaw/.

[280] *Id.*

[281] *See RH Law: Oral Arguments Audio Records, July 9, 2013*, SUPREME COURT OF THE PHILIPPINES (July 9, 2013), http://sc.judiciary.gov.ph/microsite/rhlaw/ (last visited Aug. 30, 2013). Attorney Maria Concepcion Noche focused exclusively on the Constitutional charge to "protect the life of the fetus from conception," *see* CONST. (1987) art III, sec. 12 (Phil.), and asserted that the Congressional Commission employed the term "conception" to mean fertilization of the embryo, not implantation in the uterus. *See RH Law: Oral Arguments Audio Records*, *supra*. She did not cite any cases or records that supported that contention. *Id.* Additionally, she asserted that a fertilized ovum is a person, which is a direct contravention of Philippine law. *See* CIVIL CODE, Art. 41, Rep. Act 386, as amended (Phil.) ("For civil purposes, the fetus is considered born if it is alive at the time it is completely delivered from the mother's womb."). Finally, she characterized all hormonal contraception as abortifacients and stated that IUDs cause inflammation of the uterus and fallopian tubes, which result in permanent infertility. *See RH Law: Oral Arguments Audio Records*, *supra*.

[282] Several of the justices responded skeptically to the petitioners' argument. *See* Marites Dañguilan Vitug, *Uphill climb for RH law in SC*, RAPPLER, (July 10, 2013), http://www.rappler.com/thought-leaders/33369-uphill-climb-rh-law-supreme-court.

C. The RH Act Does Not Provide Adequate Contraceptive Access in Its Current Form

While the goals of the RH Act are admirable—and, as argued above, constitutional—the Act will not create contraceptive access for low-income Filipino women due to a series of interconnected issues. This section will examine 1) the interpretation problems caused by vague language in the RH Act, 2) the likelihood of decentralization stymying the RH Act's requirements, and 3) the problems related to the RH Act's lack of funding.

1. The RH Act Needs Textual Clarity in Order to be Effectively Implemented

The RH Act begins with statements concerning the legislation's goals and guarantees universal access to "medically-safe, non-abortifacient, effective, legal, affordable, and quality reproductive health care services, methods, devices and supplies."[283] These terms are not defined, and the RH Act does not delineate what agency or official has the ability to make those determinations.[284] It appears that different agencies may be responsible for similar determinations. It is unclear whether the Food and Drug Administration ("FDA") or DOH is responsible for defining the effectiveness, medical safety, and quality of specific contraceptives. The RH Act's text restricts access to anything that the FDA determines implementation, but all other important language is left undefined.[285] Further complicating the RH Act's meaning, the adjectives used to define reproductive healthcare, methods, devices, and supplies changes throughout its text.[286] In some instances, three or four of the preceding adjectives are listed, but there is no clear evidence for why those modifiers are not standardized.

The RH's Act's implementing rules helpfully clarify some aspects of the law while leaving many of the requirements vague or undefined or creating new uncertainties.[287] A positive development is the definition of contraceptives as "any safe, legal, effective, and scientifically proven modern family planning method,[288] device, or health product."[289] Another

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[283] *See* RH Act, Rep. Act No. 10354 (Dec. 21, 2012).
[284] *Id.*
[285] *Id.*
[286] *Id*.
[287] *See* RH Act Implementing Rules O.G. (Mar. 18, 2013) (Phil.), *available at* http://www.gov.ph/2013/03/18/implementing-rules-and-regulations-of-republic-act-no-10354/.
[288] *Id.*

positive step is the correct classification of emergency contraception as preventing fertilization, but this definition directly counters the text of the RH Act[290] and a subsequent section of the rules prohibits national hospitals from purchasing or acquiring emergency contraception.[291] Uncertainties arise when different entities are charged with establishing the legality of particular methods of contraception.[292] Further, the descriptors used to define modern methods of family planning differ from those used to define contraceptives: the former includes "non-abortifacient" whereas the latter includes "scientifically proven."[293]

2. Decentralization Tension Between the National Government and LGUs Could Negatively Impact RH Act Implementation

The activities of the national government, LGUs, and several national agencies are implicated in the RH Act. Various provisions call on the "state" to act, without specifying which division of the government is responsible.[294] Additionally, the RH Act creates confusion with the established division of health care provision when it stipulates "the provision of reproductive healthcare, information, and supplies . . . must be the primary responsibility of the national government."[295] The implementing rules establish some LGU responsibilities for broadly defined reproductive health services,[296] but the rules do not provide a roadmap for how LGUs should meet those requirements or how the national government will provide assistance. Without more detail, the national government and LGUs will be unable to proceed effectively or efficiently.

As a national agency, DOH oversees much of the government's responsibility for implementing health policy, whereas LGUs are responsible

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[289] *Id.* at § 3.01.

[290] RH Act, Rep. Act No. 10354, § 9 (Dec. 21, 2012).

[291] RH Act Implementing Rules O.G. (Mar. 18, 2013) (Phil.), *available at* http://www.gov.ph/2013/03/18/implementing-rules-and-regulations-of-republic-act-no-10354/.

[292] *Id.* at §§ 3.01(j), 3.01(hh), 7.01. The FDA is charged with overseeing contraceptive whereas DOH is charged with overseeing modern methods of family planning, even though contraceptives are defined as modern methods. The Philippine National Drug Formulary System ("PNDFS") shall be observed in selecting drugs including family planning supplies that will be included or removed from the Essential Drugs List. *Id*.

[293] *Id.*

[294] *See* RH Act, Rep. Act No. 10354, § 3(e)-(f) (Dec. 21, 2012). The RH Act's § 3 "Guiding Principles for Implementation" stipulate, for example, that the state "shall promote and provide information and access . . . to all methods of family planning" and likewise "promote [reproductive health] programs." *Id*.

[295] RH Act, Rep. Act No. 10354, § 3 (g) (Dec. 21, 2012).

[296] *Id.*

for providing health services.[297] The department will have to work effectively with LGUs, but neither the RH Act nor the implementing rules includes guidelines or a blueprint for how these new activities will be carried out. Additionally, DOH's responsibilities will be greatly expanded, because it must promulgate any additional rulemaking necessary as well as procure, distribute, and monitor "the usage of family planning supplies for the whole country."[298]

Additionally, the RH Act charges other national agencies to act. The FDA will decide which methods of contraception do not prevent the implementation of a fertilized ovum[299] and certify, register, or authorize those methods.[300] Afterwards the Philippine National Drug Formulary System ("PNDFS") will consult with "reputable medical associations" to determine which contraceptives should be included in the Essential Drug List.[301] All drugs included in the list must be certified by the FDA,[302] but this system could result in the FDA certifying a specific contraceptive and PNDFS deciding not to include it. The National Household Targeting System for Poverty Reduction ("NHTS-PR") will be used to discern which low-income people qualify for free reproductive healthcare[303] and where and who they are.[304] While the implementing rules do give agencies some additional information, they do not resolve potential conflicts or clarify the RH Act's vague requirements.

The RH Act's implementing rules set forth the service requirements for LGUs. These requirements include the provision of reproductive health services and supplies, ensuring an adequate number of skilled providers with appropriate training, establishing and upgrading facilities, and conducting annual reviews.[305] While all accredited public facilities "shall provide the

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[297] The Local Government Code, Rep. Act. No. 7106, § 17 (1991) (Phil.).

[298] RH Act, Rep. Act No. 10354, § 10 (Dec. 21, 2012).

[299] *Id.* at § 2 (Dec. 21, 2012). *See also* RH Act Implementing Rules, §§ 1.04, 2.01(h), 3.01(a) O.G. (Mar. 18, 2013) (Phil.), *available at* http://www.gov.ph/2013/03/18/implementing-rules-and-regulations-of-republic-act-no-10354/.

[300] RH Act Implementing Rules, § 7.02 O.G. (Mar. 18, 2013) (Phil.), *available at* http://www.gov.ph/2013/03/18/implementing-rules-and-regulations-of-republic-act-no-10354/. If the FDA is unsure, it should follow the recommendation of an independent evidence review panel it convenes. *Id.* at § 7.02(e).

[301] *See* RH Act, Rep. Act No. 10354, § 9 (Dec. 21, 2012); RH Act Implementing Rules, § 7.01 O.G. (Mar. 18, 2013) (Phil.), *available at* http://www.gov.ph/2013/03/18/implementing-rules-and-regulations-of-republic-act-no-10354/.

[302] RH Act Implementing Rules, § 7.01 O.G. (Mar. 18, 2013) (Phil.), *available at* http://www.gov.ph/2013/03/18/implementing-rules-and-regulations-of-republic-act-no-10354/.

[303] *See* RH Act, Rep. Act No. 10354, § 3(e) (Dec. 21, 2012).

[304] *See* RH Act Implementing Rules, § 3.01(ii) O.G. (Mar. 18, 2013) (Phil.), *available at* http://www.gov.ph/2013/03/18/implementing-rules-and-regulations-of-republic-act-no-10354/.

[305] *See id.* at § 12.02.

full range of family planning methods" with the assistance of DOH,[306] the implementing rules only detail the Barangay Health Stations (BHSs) requirements concerning products.[307] Further, the rules require all province, city, and municipality health systems to "reduce the unmet need and/or gaps for reproductive health care."[308]

In order to fulfill the RH Act's requirements, all LGUs must provide services and products, modernize their facilities, create public awareness campaigns, conduct annual reviews of their implementation processes, and help meet unmet contraceptive needs. Further, all health workers must be retrained to promote reproductive health. Considering that many LGUs are not meeting their current health services obligations,[309] these new responsibilities are likely to fail without additional and specific help from the national government.

3. Lack of Dedicated Funding Destabilizes the RH Act

The RH Act does not include actual monetary appropriations.[310] While supporters have stated that the RH Act is fully funded because it will be considered as part of the annual General Appropriations Act,[311] its provisions require a great deal of funding, which has not been provided or assured. The RH Act's provisions, such as those requiring that "all accredited public health facilities shall provide a full range of modern family planning methods,"[312] will cost a great deal of money. Section 25, "Appropriations," specifies that initial funding will come from the 2013 General Appropriations Act, which was signed by the President on December 18, 2012, three days before he signed the RH Act.[313]

The implementing rules stipulate that LGUs shall appropriate RH Act funding, which may be sourced from Gender and Development ("GAD")

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[306] *See id*. at § 4.05.

[307] Barangay Health Stations must provide appropriate health information; counseling; and dispense modern contraception, but the detailed list is not exhaustive. *See* RH Act Implementing Rules, § 5.03(c) O.G. (Mar. 18, 2013) (Phil.), *available at* http://www.gov.ph/2013/03/18/implementing-rules-and-regulations-of-republic-act-no-10354/.

[308] *See id*. at § 4.10.

[309] *See supra* Part II.C.2.

[310] *See* RH Act, Rep. Act No. 10354, § 25 (Dec. 21, 2012); RH Act Implementing Rules, § 9.01 O.G. (Mar. 18, 2013) (Phil.), *available at* http://www.gov.ph/2013/03/18/implementing-rules-and-regulations-of-republic-act-no-10354/.

[311] *See, e.g.*, Press Release, Rep. Edcel C. Lagman, RH Law Not Watered Down, (Dec. 20, 2012), http://www.edcellagman.com.ph/media/press-statements/467-rh-law-not-watered-down.html (arguing that the final text of the RH Act met its objectives).

[312] *See* RH Act, Rep. Act No. 10354, § 7 (Dec. 21, 2012).

[313] *Id.*

funds as long as LGUs adhere to GAD planning and budgeting guidelines.[314] Yet, LGUs do not have control over their budgets.[315] Throughout the implementing rules, various sections that require significant funding include the assertion that "the national government shall provide additional and necessary funding and other necessary assistance."[316] Fully implementing the RH Act will require significant funding and specific funding streams, none of which are currently in place.

The uncertainty of RH funding exemplifies the problems the national government and LGUs have faced since decentralization.[317] LGUs receive revenue from local and external sources.[318] Local sources include local tax revenues, the main source of local revenue, and non-tax revenues, while external sources consist of intergovernmental transfers of funds from the national government.[319] Such transfers are usually unconditional and allow local governments the freedom to allocate national funding at will, which in turn creates differences between localities.[320]

In order to fund health services, LGUs began to receive a greater percentage of national revenue than they had previously, which they could allocate within their budgets as desired.[321] However, that percentage is not always adequate, nor does the national government reliably release it in full.[322] The internal revenue allotment ("IRA") of the national revenue is divided between provinces, cities, municipalities, and barangays[323] on the basis of population, land area, and equal sharing, not on poverty or the cost of services.[324] LGUs depend heavily on IRAs, but the system is vulnerable to shocks that the national government cannot control.[325] This inability increases an LGU's volatility, because the national government decreases

[314] RH Act Implementing Rules, § 12.02(o) O.G. (Mar. 18, 2013) (Phil.), *available at* http://www.gov.ph/2013/03/18/implementing-rules-and-regulations-of-republic-act-no-10354/.

[315] *See* The Local Government Code, Rep. Act. No. 7106, § 17 (1991) (Phil.).

[316] *See* RH Act Implementing Rules, § 6.07 O.G. (Mar. 18, 2013) (Phil.), *available at* http://www.gov.ph/2013/03/18/implementing-rules-and-regulations-of-republic-act-no-10354/.

[317] Rama Lakshminarayanan, *Decentralisation and its Implications for Reproductive Health: The Philippines Experience*, 11 REPROD. HEALTH MATTERS 96, 96-107 (2003), *available at* http://siteresources.worldbank.org/INTPRH/Resources/PhilippinesRHMarticle.pdf.

[318] Uchimura & Suzuki, *supra* note 166, at 43.

[319] *Id.* at 44

[320] Hiroko Uchimura, *Health Development in the Decentralized Health System of the Philippines: Impact of Local Health Expenditures on Health*, *supra* note 166, at 74.

[321] *See* The Local Government Code, Rep. Act. No. 7106, § 17 (1991) (Phil.).

[322] Langran, *supra* note 109, at 366.

[323] *Id.* at 364.

[324] *Id.* at 366.

[325] Uchimura & Suzuki, *supra* note 166, at 60.

the resources it makes available to LGUs.[326] Such dependence weakens local control over fiscal capacity and can create local financial instability.

Some LGUs have worked to find additional sources of revenue, but none have found a way to significantly compensate for the lack of funding.[327] The Local Government Code of 1991 allowed cities the most autonomy to levy taxes, while provinces and municipalities have less freedom to levy the full range of local taxes.[328] Indeed,

> [u]nder devolved government, local funds are critical to serve low-income women's modern contraceptive needs. The phasing out of USAID's donations, Catholic Church advocacy against contraception, and the absence of adequate national government funding has led to a greatly worsened situation for low-income women who seek contraception. A safety net guaranteeing access to contraceptives is needed.[329]

Additionally, the Alliance of Health Workers explained that "based on experience, Filipino public health workers only get to enjoy these benefits, such as the hazard pay, only after they have held mass actions calling for it."[330] The Magna Carta of Public Health Workers has not been repealed, nor is DOH empowered to change the terms of the benefits it provides. Yet, in the face of budgetary problems, the department altered the terms without the legal authority to do so.[331] If opponents manage to limit the RH Act's funding through annual national budgetary deliberations, which result in the General Appropriations Act, then the RH Act's provisions will likely be ignored. It is unclear whether mass actions on the part of its supporters would restore lost funding.

The RH Act states that for all subsequent years, funding will be included in the annual General Appropriations Act, which will allow for annual Congressional debate on the merits of funding reproductive healthcare.[332] This schedule will allow opponents numerous opportunities to frustrate the RH Act's goals. As experience has demonstrated, legislation without adequate and dedicated funding is unlikely to be fully

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[326] *Id.*

[327] Langran, *supra* note 109, at 366.

[328] There are ten types of local taxes, but only cities have the ability to levy all ten. Cities can also levy higher taxes than provinces or municipalities. *See* Uchimura & Suzuki, *supra* note 166, at 44.

[329] Lee, *supra* note 146, at 99–107.

[330] Salamat, *supra* note 164.

[331] *See supra* Part II.C.2.

[332] *See* DEPT. OF BUDGET AND MGMT., *supra* note 42.

implemented.[333] As with the Magna Carta of Public Health Workers,[334] legislation without adequate and certain appropriations attached is not certain to be funded.

IV. IN ORDER TO PROVIDE NEEDED CONTRACEPTIVE ACCESS, THE PHILIPPINE GOVERNMENT SHOULD CONFIRM THE RH ACT'S CONSTITUTIONALITY AND STRENGTHEN THE RH ACT'S PROVISIONS

The Philippines has an obligation under national and international law to provide access to contraception. Though that obligation creates conflict with the country's Catholic majority, the Philippines is a secular state. As such, it promulgated legal obligations, which it has not met, and therefore, the Philippine government has a responsibility to act. The section will examine A) why the Philippines should provide contraceptive access, B) why the Supreme Court should confirm the constitutionality of the RH Act, and C) how the RH Act could be strengthened.

A. The Philippines Should Provide Contraceptive Access

Under Philippine law, modern contraceptives are legal. Yet, as they are cost-prohibitive for the lowest-income women, government inaction makes them unavailable for those women.[335] The Philippines Constitution and numerous ratified international agreements support the government's affirmative duty to provide health services.[336] Indeed, the Philippine government defines access to contraceptives as basic health care.[337] ICESCR goes beyond articulating a simple right to health, stipulating instead the right of all people to the "enjoyment of the highest attainable standard of physical and mental health."[338] By attesting to their unmet need for

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[333] *See* CONST. (1987), art. II, sec. 12, 14, 15 (Phil.); Salamat, *supra* note 164.

[334] *See supra* Part II.C.2.

[335] *See, e.g.*, DECLARING TOTAL SUPPORT TO THE RESPONSIBLE PARENTHOOD MOVEMENT IN THE CITY OF MANILA AND ENUNCIATING POLICY DECLARATIONS IN PURSUIT THEREOF, Exec. Ord. 003 (2000) (Phil.), *available at* http://www.likhaan.org/sites/default/files/pdf/2000_manila_policy_eo_003.pdf (explaining that the Mayor of Manila revoked all public funding for contraception by executive order).

[336] *See* Comm. on Econ., Soc. & Cultural Rights, *General Comment 14: The Right to the Highest Attainable Standard of Health*, § 8, E/C.12/2000/4 (Aug. 11, 2000); CONST. (1987), art. II, sec. 15, (Phil.).

[337] LOCAL GOVERNMENT CODE OF 1991, § 17(b)(2)(iv), Rep. Act 7160, as amended (Phil.). Local government units are tasked with the responsibility of providing basic services and facilities, including "social welfare services which include programs and projects on child and youth welfare, family and community welfare, women's welfare, welfare of the elderly and disabled persons; community-based rehabilitation programs for vagrants, beggars, street children, scavengers, juvenile delinquents, and victims of drug abuse; livelihood and other pro-poor projects; nutrition services; and family planning services." *Id.*

[338] ICESCR, *supra* note 21.

contraceptives, low-income Filipino women have indicated that the government has not met their reproductive health needs. In so doing, the government has also negatively affected their self-determination and ability to affect the systemic inequalities they face. To date, the government has shirked its established duty[339] to provide contraceptive access; the RH Act is a necessary first step in correcting their policies.

B. The Supreme Court Should Hold the RH Act Constitutional

The Supreme Court should both dismiss the petition G.R. No. 204819 due to clear procedural and substantive problems, and find the RH Act constitutional. The petition should fail because stare decisis demonstrates that religious rationales have no place in Philippine jurisprudence,[340] and the petitioners' do not have adequate legal or medical arguments to support their case.[341] The Court has the opportunity to reconfirm the separation between the state and religion, while signaling its commitment to the rule of law.

The RH Act respects the country's prohibition on abortion,[342] even to the extent that it incorrectly[343] defines emergency contraception as an abortifacient.[344] The Act does not mandate contraception usage or subvert personal decision-making, which might have strengthened petitioners' argument. Existing Philippine law supports contraceptive access and the aims of the RH Act.[345] The petitioners' inability to establish standing or harm or cite any legal sources as support attests to the fallibility of their argument.

While the Supreme Court has not comprehensively interpreted the socioeconomic rights articulated in the 1987 Constitution, the Court's jurisprudence confirms that LGUs must adhere to national policy and do not

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[339] An Act Providing for the Magna Carta of Women, Rep. Act 9710, § 17 (Aug. 14, 2009) (Phil.), *available at* http://www.gov.ph/2009/08/14/republic-act-no-9710/.

[340] *See* Estrada v. Escritor, AM No. P-02-1651 (S.C. Aug. 4, 2003) (Phil.) *available at* http://www.lawphil.net/judjuris/juri2003/aug2003/am_p_02_1651_2003.html (stating that "[n]on-establishment thus calls for government neutrality in religious matters"); Ang Ladlad v. Comelec, G.R. No. 190582 (S.C., Apr. 8, 2010) (Phil.) *available at* http://sc.judiciary.gov.ph/jurisprudence/2010/april2010/190582.htm (stating that "governmental reliance on religious justifications is inconsistent with this policy of neutrality"); Aglipay v. Ruiz, G.R. No. L-45459 (S.C., Mar. 13, 1937) (Phil.), *available at* http://www.lawphil.net/judjuris/juri1937/mar1937/gr_l-45459_1937.html.

[341] *See supra* Part III.B.

[342] RH Act, Rep. Act No. 10354, § 3(j) (Dec. 21, 2012).

[343] Emergency contraception is not an abortificaient. *See* Office of Population Research, *How Emergency Contraception Works*, PRINCETON UNIV., http://ec.princeton.edu/questions/ecabt.html (last visited Sept. 23, 2013).

[344] RH Act, Rep. Act No. 10354, § 9 (Dec. 21, 2012).

[345] *See supra* Part II.C.

have the autonomy to ignore national directive and legislation.[346] Further, the right to health, upon which the RH Act is premised, is self-executing and judicially enforceable.[347] The right to health is not aspirational, but in effect. All of this suggests that the national government has the obligation to provide contraception, which Filipinos have the right to access as part of their right to health.

C. The RH Act Must Be Strengthened

While the aims of the RH Act are admirable, neither the text nor the implementing rules include a blueprint for implementation. In order to strengthen the Act, the national government should 1) convene a committee to augment the existing implementing rules[348] and should 2) appropriate funding and create a dedicated funding stream through additional legislation.

1. The National Government Should Augment the Existing Implementing Rules and Regulations

Through the RH Act, the Philippine Congress articulated its goals for reproductive health and responsible parenthood, but in order for these goals to be realized, official actors at the national and local levels have to understand their responsibilities. The initial implementing committee did not resolve many of the RH Act's generalities or specify how exactly LGUs can meet their new requirements.[349] Further, DOH working with LGU representatives should create ground rules for the interaction between national entities and LGUs. Together, all implicated organizations and populations should devise a work plan and reporting structure.

While the implementing committee included LGU representatives, Civil Society Organizations (CSOs) such as Likhaan Center for Women's Health, and healthcare providers, it did not include women who have been

[346] The Center for Reproductive Rights made this argument concerning Manila's contraceptive ban. *See* Letter from Center for Reproductive Rights to the United Nations Committee against Torture, Office of the United Nations High Commissioner for Human Rights 12-13 (2012), *available at* http://reproductiverights.org/sites/crr.civicactions.net/files/documents/crr_Philippines_CAT_Shadow_Letter_2012.pdf.

[347] Oposa v. Factoran, G.R. No. 101083 (S.C., July 30, 1993) (Phil.) at 11, *available at* http://www.lawphil.net/judjuris/juri1993/jul1993/gr_101083_1993.html.

[348] Implementing Rules and Regulations of the Responsible Parenthood and Reproductive Health Act of 2012 O.G. (Mar. 18, 2013) (Phil.), *available at* http://www.gov.ph/2013/03/18/implementing-rules-and-regulations-of-republic-act-no-10354/ [hereinafter RH Act Implementing Rules].

[349] *See supra* Part III.C.1. & 2.

unable to access contraception.[350] DOH should also involve representatives of the priority population, namely low-income women without current contraceptive access. Their involvement would allow the DOH to understand the limitations and barriers these women personally faced rather than simply relying on reports from LGU officials, including those not in compliance with current policy. The *Lourdes Osil et al. v. Mayor of Manila* plaintiffs, who were twenty low-income people affected by a lack of contraceptive access, would be able to speak to their experiences and help inform the government how to better serve the most marginalized. The benefits to these individuals would be two-fold: they would have the opportunity to discuss the reproductive oppression they experienced and begin to create systemic change through self-determination.

In order to ascertain whether LGUs are complying with the RH Act, DOH must have an open and detailed dialogue with LGUs at all levels to ensure they are properly implementing the RH Act. DOH should also engage in a continuing dialogue with low-income women to ensure they have access to needed contraceptives. Further, it would be helpful for the Department to nationalize as many of the RH requirements as possible in order to create countrywide standards. DOH should study the RH Act's modernization requirements and provide guidance for all LGUs, create public awareness campaigns that LGUs could tailor to meet local needs, implement a reporting structure, create report templates and furnish them to LGUs, and establish the additional mandatory reproductive health training for all health workers.

The implementation process will not be easy, nor will it be accomplished quickly, but dedication to this part of the process will make it more likely that the RH Act's goals will be met and the sponsors sweeping statements become reality.

2. Dedicated Funding and Revision to Local Government Code is Necessary

Implementing the RH Act requires significant funding. Without dedicated funding, it will be impossible to accomplish the RH Act's requirements.[351] If the Philippine Congress considers funding annually as part of the appropriations process, opponents of contraception access will likely realize some success in frustrating the RH Act's provisions, because they will be given an annual forum for debating the issues the RH Act

[350] *Id.*
[351] *See supra* Part III.C.3.

raises.[352] In order to ensure the RH Act's survival and to prevent the de facto repeal that the Magna Carta of Public Health Workers faced,[353] Congress needs to enact dedicated, multi-year funding tied to inflation. Such funding would ensure that the RH Act's goals do not fail simply because of inadequate funding. This funding must be large enough to cover the purchase and provision of contraception, LGU modernization efforts, annual reporting, the training of health workers, and the oversight necessary to assure compliance at all LGU levels.

Currently, all funding provided to LGUs can be allocated to local budgets at the discretion of the LGUs.[354] This system will not be conducive to realizing the goals of the RH Act. If LGUs reallocate RH Act funding to other parts of their budgets, the aims of the RH Act will be frustrated. Further, much of the necessary funding will go directly to LGUs for facility modernization, public awareness campaigns, and health worker training. Therefore, Congress should either revise the Local Government Code so that LGUs cannot reallocate the health funding they receive from the national government, or pass additional legislation requiring RH Act funding to be spent on activities approved by DOH.

V. CONCLUSION

Reproductive justice will exist in the Philippines when the lowest-income Filipino women have access to contraception. As long as women express a desire to use modern contraception but cannot access it, the Philippine government has not met its obligations. As the right to health is self-executing, Filipinos do not depend on the interest or goodwill of their government, but rather have enforceable claims to health care, including contraception. The government of Philippines should adhere to the Constitution, national laws, and ratified international agreements and fulfill the RH Act's objectives to advance reproductive justice for all Filipinos.

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[352] *Id*.
[353] *See supra* Part III.C.2.
[354] *See* Langran, *supra* note 109 at 366.